

**NOTICE OF FINAL RULEMAKING**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

R12-15-701	Amend
R12-15-702	Repeal
R12-15-702	New Section
R12-15-703	Repeal
R12-15-703	New Section
R12-15-703.01	Repeal
R12-15-704	Repeal
R12-15-704	New Section
R12-15-705	Repeal
R12-15-705	New Section
R12-15-706	Repeal
R12-15-706	New Section
R12-15-707	Repeal
R12-15-707	New Section
R12-15-708	Repeal
R12-15-708	New Section
R12-15-709	Repeal
R12-15-709	New Section

R12-15-710	Repeal
R12-15-710	New Section
R12-15-711	Repeal
R12-15-711	New Section
R12-15-712	Repeal
R12-15-712	New Section
R12-15-713	Repeal
R12-15-713	New Section
R12-15-714	Repeal
R12-15-714	New Section
R12-15-715	Repeal
R12-15-715	New Section
R12-15-716	Repeal
R12-15-716	New Section
R12-15-717	Repeal
R12-15-717	New Section
R12-15-718	Repeal
R12-15-718	New Section
R12-15-719	Repeal
R12-15-719	New Section
R12-15-720	Repeal
R12-15-720	New Section
R12-15-721	Repeal

R12-15-721	New Section
R12-15-722	Repeal
R12-15-722	New Section
R12-15-723	Repeal
R12-15-723	New Section
R12-15-724	Repeal
R12-15-724	New Section
R12-15-725	Repeal
R12-15-725	New Section
R12-15-726	New Section
R12-15-727	New Section
R12-15-728	New Section
R12-15-729	New Section
R12-15-730	New Section

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 45-105(B)(1) and 45-576(H)

Implementing statutes: A.R.S. §§ 45-108, 45-113, and 45-576

**3. The effective date of the rules:**

These amendments are effective immediately upon filing with the office of the Secretary of State, pursuant to A.R.S. § 41-1032(A)(1), because the amendments will preserve the public peace, health or safety. The rule package includes rules that replace ADWR's emergency rules,

which closed a potential loophole in the permanent rules for Assured and Adequate Water Supply that might be construed to require an over-allocation of groundwater supplies. See 11 A.A.R. 2706, July 22, 2005; 12 A.A.R. 144, January 13, 2006. The emergency rules expired on June 21, 2006. Additionally, the rule package reorganizes and clarifies the current rule provisions for the benefit of the public and applicants and will provide for extensive streamlining of the application process, thereby allowing ADWR to focus on and promote the fundamental purpose of the Assured and Adequate Water Supply Programs: to protect the public by ensuring that water supplies are available to meet the demands of new subdivisions in Active Management Areas (“AMAs”) and to provide notice to home buyers of available water supplies in areas outside AMAs.

**4. A list of all previous notices appearing in the *Register* addressing the final rules:**

Notice of Rulemaking Docket Opening: 11 A.A.R. 2392, June 24, 2005

Notice of Proposed Rulemaking: 12 A.A.R. 383, February 10, 2006

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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**6. An explanation of the rules, including the agency's reasons for initiating the rules:**

**GENERAL EXPLANATION OF THIS RULEMAKING**

The assured water supply program was created as part of the 1980 Groundwater Management Act, and operates within Arizona's five Active Management Areas ("AMA"). The adequate water supply program was created in 1973 and applies in all other areas of the state. Assured and Adequate Water Supply rules were adopted and effective February 7, 1995.

The assured water supply program has two primary purposes. First, the program facilitates the achievement of the AMA water management goal. For the Prescott, Tucson, and Phoenix AMAs, the management goal to be reached by the year 2025 or earlier is "safe-yield," a groundwater management goal that attempts to achieve and thereafter maintain a long-term balance between the amount of groundwater withdrawn in an active management area and the annual amount of natural and artificial recharge in the active management area. *See* A.R.S. § 45-561(12). The management goal of the Pinal AMA is to allow development of non-irrigation uses and to preserve existing agricultural economies in the AMA for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. The second purpose of the assured water supply program is to protect consumers purchasing homes by requiring developers to demonstrate a 100-year water supply before selling lots.

The adequate water supply program is also intended to protect consumers. The adequate water supply program, however, only requires that a determination of inadequate water supplies be included in the public report and any promotional materials for a new

subdivision. A determination of inadequate water supply does not preclude plat approval, issuance of a public report or the sale of lots.

In the spring of 2005, the state legislature passed H.B. 2174. The bill established an administration fund to allow fees collected by the Assured and Adequate Water Supply program to be used in support of the program. The bill also required the Director of the Department to establish an advisory committee to review the current Assured and Adequate Water Supply Rules and the application review process to increase the efficiency of the program.

On May 25, 2005, the Department held the first meeting of the advisory committee established pursuant to H.B. 2174. The Department held 10 full committee meetings to discuss maximizing the efficiency of the two programs. In addition, the Department held nine sub-group meetings to review topics including inter-agency coordination, issues specific to certificates, rural issues regarding water adequacy reports, and application fee increases. A total of 19 informal meetings were held to solicit public input from concerned parties. The Department also sought written comments on the draft rules from stakeholders during two informal public comment periods. The first comment period was from October 1, 2005, through October 27, 2005. The Department revised the rules as a result of comments received and released a second draft of the proposed rules on November 3, 2005. The Department held a public meeting on November 9, 2005, to discuss the proposed changes. Following the November 9, 2005, meeting, the Department allowed an additional 30-day public comment period on the second draft of the rules. The proposed rules included in this rulemaking incorporate revisions made in response to comments received during both informal public comment periods.

### **Program Overview**

The Office of Assured and Adequate Water Supply manages applications for both the Assured Water Supply program and the Adequate Water Supply program. An applicant seeking to demonstrate an assured water supply must provide evidence of the following five criteria: (1) physical and continuous availability; legal availability for at least 100 years; (2) consistency with the management plan; (3) consistency with the management goal; (4) the water supply must be of adequate quality; and (5) financial capability.

Currently, the Department issues five different assured water supply determinations. The current assured water supply application types are outlined as follows.

#### **Assured Program**

<b><u>Type</u></b>	<b><u>Applicant</u></b>	<b><u>Purpose</u></b>
Designation	Water Provider	Allows recordation of plat and issuance of public report
Physical Availability Determination	Land Owner or Water Provider	Optional pre-certificate or pre-designation demonstration of volume and water quality
Analysis	Land Owner	Optional pre-certificate determination of one or more requirements; reserves groundwater for 10 years
Certificate	Land Owner	Allows recordation of plat and issuance of public report

Assignment	Certificate Holder	Allows for transfer of certificate to new land owner (A.R.S. § 45-579)
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The Adequate Water Supply program, first created in 1973, operates outside of the Active Management Areas as a consumer protection program. The current adequate water supply application types are outlined below.

### **Adequacy Program**

<b><u>Type</u></b>	<b><u>Applicant</u></b>	<b><u>Purpose</u></b>
Designation	Water Provider	Allows recordation of plat and issuance of public report
Physical Availability Determination	Land Owner or Water Provider	Optional pre-certificate or pre-designation demonstration of volume and water quality
Analysis	Land Owner	Optional pre-certificate determination of one or more requirements; reserves groundwater for 10 years
Water Report	Land Owner	Allows recordation of plat and issuance of public report

Currently, applications for water adequacy determinations must prove the following: (1) physical, continuous and legal availability for at least 100 years and (2) compliance with

existing state water quality standards. Because water adequacy determinations are appropriate only in areas outside of AMAs, applications are not required to comply with a management goal or management plan. The key difference between the requirements of the Adequate Water Supply program and the Assured Water Supply program is that even if the water supply is determined to be inadequate, a developer relying on the water adequacy determination may proceed to seek plat approval and issuance of a public report from the Arizona Department of Real Estate, and may proceed to sell lots. The inadequate determination, however, must be disclosed by the subdivider to initial potential buyers.

### **Staffing and Workload**

The application rate for certificates has increased dramatically in recent years. The Department experienced a 144% increase in activity in FY03-04 over the 10-year annual average since 1995, the effective date of the rules. In FY04-05, OAWS experienced a 195% increase over the historical annual average.

At the same time that the program saw a dramatic increase in the number of applications, it has also experienced a reduction in staff. The program handled an average of 102 applications per person in FY04-05. The program handled an average of 75 applications per person in FY03-04, and has a 10-year historical annual average of 22 applications per person per year. This staffing shortage is in large part due to the Department's budgetary constraints. This has created a burden on staff as well as delays in review of applications for the regulated community. As a partial remedy to this budgetary shortage, the Legislature, the Governor, and the Department, in conjunction with the development

community, sought to secure independent funding to support the assured and adequate water supply programs through a self-supporting fee structure.

### **Efficiency Review by Stakeholders and the Department**

A review by the stakeholders and the Department revealed that the greatest burden on the two programs was as a result of re-review of certificates of assured water supply due to ownership changes. By way of background, the Department of Real Estate will issue a public report only to a person or legal entity that, among other requirements, appears on a certificate of assured water supply. Therefore, if the person or legal entity changes between the time of the issuance of a certificate of assured water supply and the time of the public report, that person/legal entity must apply to the department again for a change of ownership. After a review of the Department's review process and procedures for change of ownership applications, both the Department and the stakeholders agreed that new measures should be implemented in order to increase the efficiency and effectiveness of the change of ownership process. This rule package retools existing rules and introduces a new application classification process that will save time and resources for both the applicants and the Department.

The stakeholders and the Department also found additional ways to increase efficiency and effectiveness in both programs, including deference to the Arizona Department of Environmental Quality when conducting water quality reviews; simplification of plat change reviews; deference to local platting authorities for financial capability review and allowing the transferability of will-serve agreements between a water provider and subsequent developers for the same development.

### **Self-Funding Proposal**

In addition to proposing a modification of the assured and adequate water supply rules, ADWR is proposing a modification of the fees for each type of application. The Department developed the proposal with the assistance of the regulated community in an effort to balance the cost associated with increased staffing required to effectively implement the two programs, with the need to keep the fee structure manageable and incorporate the decrease in cost due to improved efficiency.

The proposed fee structure does not completely recover the estimated program costs, but the Department and stakeholders agreed to these proposed fees with the understanding that the Department will track its actual costs over the near term and will propose modifications to the fee structure if necessary.

### **Other Rule Changes**

In addition to revising the rules for efficiency as called for by H.B. 2174, ADWR is including three additional modifications to the rule package. Proposed rule R12-15-729 is a new rule that incorporates Laws 1997, Ch. 287, § 52, and the Department's current substantive policy statement, "Remediated Groundwater Incentive for Assured Water Supply Accounting." This rule requires the Director to determine that groundwater pumped pursuant to the Water Quality Assurance Revolving Fund (WQARF) or federal Superfund cleanup site is consistent with the management goal of the AMA under certain circumstances. The intent of the legislation was to eliminate a potential penalty for providers who assist in the cleanup of polluted sites, and allow them the ability to use the treated water as an alternative to groundwater supplies. The incorporation of the session law and substantive policy statement into the program rules will improve the efficiency of the rules and their implementation.

This rulemaking also includes the Department's emergency rules, A.A.C. R12-15-701(10), R12-15-703(B)(1)(d)(iii) and R12-15-717(B)(1)(d)(iii) ("emergency rules"), for which a Notice of Proposed Rulemaking was published on January 6, 2006. The provisions are incorporated into this rulemaking as proposed R12-15-716(B)(3)(c). The emergency rules were necessary after the Department discovered an omission in the current rule that could have forced ADWR to ignore the projected demand of designated providers and the demand of issued certificates and water reports for which plats had not been recorded when reviewing subsequent applications for the physical availability of groundwater. One of the primary purposes of the emergency rules, therefore, was to prevent an over-allocation of groundwater supply to subdivisions and water providers. The proposed rule removes the omission, thus protecting the program's effectiveness.

In addition, this rulemaking also puts into rule form the Department's material plat change policy. This rulemaking, however, streamlines and simplifies the material plat change process, which makes it easier for staff and applicants to understand and implement, thereby increasing the effectiveness and efficiency of the material plat change process.



## **RULE-BY-RULE SUMMARY EXPLANATION OF THIS RULEMAKING**

### **Introduction**

In addition to revising current rules and adding new rules in order to improve the efficiency of the assured and adequate water supply programs, this proposed rulemaking also reorganizes the current assured and adequate water supply rules. The current rules splinter the criteria for the requirements of each application type throughout the rules. As a result, applicants must read and understand all of the current rules in order to make a complete and accurate application to the Department. This proposed rulemaking reorganizes the current rules to make them more practically accessible and understandable to Department staff and the regulated community.

Some comments on the draft rules questioned how existing determinations will be affected if the draft rules are adopted. Any existing physical availability determinations, certificates of assured water supply, analyses of assured and adequate water supply, designations of assured and adequate water supply, and water reports will remain in full force and effect after the proposed rules become effective. For purposes of review or revocation, all determinations issued prior to the effective date of these proposed rules will be subject to the current rules. Orders of the Director, such as those designating providers as having an assured water supply, that include citations to the existing rules will not be affected by this rulemaking solely because the rule numbers may have changed. The proposed rules will apply, however, to the following:

- Modifications of existing designations
- Extensions of existing analyses
- Assignments of existing certificates

- New applications for previously issued certificates due to change in ownership (currently subject to R12-15-708; under proposed rules subject to R12-15-704(G)).
- Material plat change reviews

### **R12-15-701. Definitions - Assured and Adequate Water Supply Programs**

Proposed R12-15-701 includes definitions of terms not defined in Title 45 or the current management plans for the AMAs. Many of the current definitions have been revised for clarity. A redlined version of the definitions section is included in this Notice of Proposed Rulemaking. One significant new term and definition is the definition for “estimated water demand.” The Department has added this term to define the Director’s determination of the 100-year demand for subdivisions (for certificate applicants) and the determined current, committed, and projected demand for designation applicants. In response to discussions with the stakeholders, the Department chose the term “estimated water demand” to reflect the fact that the Director’s determination of the water demand submitted by applicants is an estimate, and not an exact volume. The Department has also added new terms and definitions for the following:

*“Abandoned plat”*

*“Adequate delivery, storage and treatment works”*

*“Affiliate”*

*“Analysis”*

*“Analysis holder”*

*“Annual authorized volume”*

*“Annual estimated water demand”*

*“Approved remedial action project”*

*“ADEQ”*

*“Authorized remedial groundwater use”*

*“CAGRD”*

*“Certificate holder”*

*“Current demand”*

*“Designated provider”*

*“Determination of adequate water supply”*

*“Determination of assured water supply”*

*“Diversion works”*

*“EPA”*

*“Estimated water demand”*

*“Member land”*

*“Member service area”*

*“Municipal provider”*

*“Physical Availability Determination”*

*“Proposed municipal provider”*

*“Purchase Agreement”*

*“Subdivision”*

### **R12-15-702. Physical Availability Determination**

The current rule for physical availability determination is contained in a single paragraph in current rule R12-15-702(C). Current R12-15-702(C) provides little explanation or

standards for the issuance of a physical availability determination. Proposed rule R12-15-702 revises current rule R12-15-702(C) and details the requirements for a physical availability determination to clarify the process for the applicant.

Subsection (A) explains what information must be included in the application submitted to the Director. Subsection (B) details who must sign the application. Subsection (C) explains what criteria the applicant must demonstrate in the application. Subsection (D) details how the Director will evaluate those items in order to determine whether to issue the physical availability determination. None of these detailed requirements exist in current R12-15-702(C). The inclusion of these changes will increase efficiency and effectiveness for the assured and adequate water supply program.

### **R12-15-703. Analysis of Assured Water Supply**

The current rules regulating Analysis of Assured Water Supply are scattered throughout the Assured Water Supply Rules in R12-15-702 and R12-15-712. Proposed rule R12-15-703 revises and reorganizes the current analysis rules and makes substantive and procedural changes to the analysis application process that will increase the effectiveness and efficiency of the program.

Subsection (A) requires that the applicant for an analysis either be the owner of the land that is the subject of the analysis or have the consent of the owner. The current rules do not allow anyone but the owner of the land to apply for an analysis. In addition, the current rules include a separate rule for the State Land Department to obtain an evaluation of the water resources for state-owned land. Subsection (A), however, allows the State Land Department to apply for an analysis of assured water supply. Applicants who wish to develop land that is contiguous to state-owned land will now be able to

include that land in an application for an analysis with the consent of the State Land Department, which will streamline the process for applicants, the State Land Department, and the Department. Subsection (A) codifies the Department's policy that only a person proposing to develop land that will not be served by a designated provider may apply for an analysis.

Subsection (B) states what information the applicant must submit with the application and subsection (C) describes who qualifies as an authorized signatory on the application. Subsection (C) also allows an appropriately designated agent to sign on behalf of the owner. The current rules do not allow for a designated agent to sign for the owner. This change will increase the efficiency of the process for the applicant by allowing the applicant to designate an agent to sign the application and related documents.

Subsection (F) allows a 10-year term for the analysis. The current analysis of assured water supply rules contain no expiration date, although in practice the Department issues each analysis with a 10-year term. Subsection (H) provides for renewal of the analysis for two five-year terms, for a total period of 20 years. The proposed rule sets forth factors for consideration in the renewal: capital investment, material progress, and reasons for delay of the development. The proposed rule requires an extension for two five-year terms if any of the foregoing factors are met. The Director may continue to extend the analysis for additional five-year periods, at the Director's discretion. The current analysis rules do not provide for the extension of an analysis. By providing a definite term and renewal procedures in this rulemaking, R12-15-712 provides analysis applicants and analysis holders with certainty in their planning processes, and increases the effectiveness and efficiency of the program.

Subsection (G) adds a provision that allows the analysis holder to notify the Department if they will not need all of the water reserved by the analysis. No such provision exists in the current rules. This provision will free up unused water for future development.

#### **R12-15-704. Certificate of Assured Water Supply**

The current Certificate of Assured Water Supply rules are scattered throughout the Assured Water Supply Rules in Rules R12-15-702 through 707. This rulemaking creates one rule that explains what information must be included in the application for a certificate. The current rules do not have one such rule; rather, the applicant must read through all of the current rules to understand the application requirements. Proposed rule R12-15-704 reorganizes the current rules regarding certificates and makes several substantive and procedural changes that increase the effectiveness and efficiency of the certificate process.

Subsection (A) codifies the Department's policy of allowing potential purchasers' and affiliates' names on the certificate. Subsection (B) revises the current rule R12-15-702(A)(1)(a) and (B) to clarify what information the applicant must submit to prove ownership of the land and who must sign the application. This proposed rulemaking will eliminate the considerable time applicants and staff spend trying to determine what type of proof of ownership is acceptable under the current rules. In addition, staff spends time independently researching ownership on the assessor's web site, which is an inefficient use of staff time, and does not always yield accurate results. Subsection (C) revises R12-15-702(B)(2) to clarify the ability of a designated agent to sign on behalf of the owner. Like subsection (B), this subsection will eliminate the time applicants and staff spend trying to determine who is an appropriate signatory under the rules. This provision has

also been incorporated throughout the rulemaking for all applications. The rule changes will significantly increase the efficiency by which applications are processed, and will make more effective use of staff time.

This rulemaking eliminates the 90-day time limit for submittal of change of ownership applications that exists in current rule R12-15-708. Proposed rule R12-15-704(G) allows a new certificate to be issued for a subdivision if a previous certificate was issued, provided the criteria set forth in either R12-15-704(F) or (G) are met. This change provides the applicant with greater flexibility about when he or she may file an application.

The stakeholder process identified a need for the Department to decrease its subsequent review of applications for change of ownership and assignments. In response to this concern by the stakeholders, the Department developed a classification system for certificates. The Department believes that under the classification system, staff will focus their attention on criteria that need additional review. Subsection (H)(1) provides that a certificate shall be classified as a “Type A” certificate if the application meets the requirements under the financial capability rule and a municipal provider holds the water right. Subsection (H)(2) provides that certificates based on water supplies that may require further review if ownership changes shall be classified as a “Type B” certificate. The Department believes that this process will increase the efficiency and effectiveness of the program by decreasing subsequent reviews of applications.

Subsection (J) makes editorial changes to current rule R12-15-702(I). Subsection (J) states that a new certificate is not required if the subdivision plat was recorded prior to

1980 or if a certificate was issued prior to February 7, 1995, and no change was made to the plat since February 7, 1995, and water service is available to each lot.

Subsection (K) provides for an “end of process procedure.” It states that a certificate is not required for a new owner of a subdivision to reapply for a new certificate under certain circumstances. Subsection (K) will decrease the need for subsequent application reviews by the Department, thereby increasing the efficiency of the assured water supply program.

#### **R12-15-705. Assignment of Type A Certificate of Assured Water Supply**

Proposed rule R12-15-705 is a new rule that provides for the assignment of a Type A certificate to a new owner. Proposed rule R12-15-705 ensures that assignments will meet the requirements of A.R.S. § 45-579, but provides a more efficient process for those assignments that meet the criteria in R12-15-704(H)(1).

Subsection (A) requires the applicant to submit proof of ownership of the land, a copy of the current subdivision plat, and self-certification that certain requirements of A.R.S. § 45-579 are met. The Department’s inclusion of a self-certification feature on the application will reduce staff review time for the Department, thus allowing the Department to issue the assignment application more efficiently. Subsection (B) explains who must sign the assignment application. Subsection (C) explains the public notice requirement for the application. Subsection (D) details the process for issuing an assigned Type A certificate.

#### **R12-15-706. Assignment of Type B Certificate of Assured Water Supply**



Proposed rule R12-15-706 is a new rule that provides for the assignment of Type B Certificates of Assured Water Supply. An assignment of a Type B Certificate of Assured Water Supply follows the assignment process set forth in A.R.S. § 45-579.

Subsection (E) allows for a Type B certificate holder to request that the certificate be re-classified as a Type A certificate. The inclusion of this re-classification provision will allow Type B certificate holders and holders of certificates issued before the rulemaking that qualify for a Type A certificate to benefit from the streamlined Type A assignment review process in future reviews.

#### **R12-15-707. Application for Classification of a Type A Certificate**

Proposed rule R12-15-707 is a new rule that provides an optional process for the proposed Type B CAWS and for CAWS issued before this rulemaking to be re-classified as a Type A CAWS if the requirements of a Type A CAWS are met. Subsection (C) provides that if the applicant demonstrates that the requirements of R12-15-704(H)(1) are met, that the Director shall classify the certificate as a Type A certificate. The inclusion of this classification provision will provide those Type B certificate holders who can qualify for a Type A certificate to benefit from the streamlined Type A assignment review process.

#### **R12-15-708. Material Plat Change; Application for Review**

Proposed rule R12-15-708 is a new rule that substantially revises the material plat change policy implemented by the Department in 2004. The Department bases its determination of an assured or adequate water supply, in part, on the plat submitted with a certificate or water report application. If changes are made to the plat after a determination is issued, the Department's determination of an assured or adequate supply may be impacted. The

current material plat change policy created criteria by which the Department could determine whether changes to plats materially affect the Department's initial determination of an assured or adequate supply. Proposed rule R12-15-708 attempts to standardize the material plat change review process for applicants and Department staff in order to make the process more effective and efficient.

The proposed rule focuses on number of lots, water demand, and the inclusion of additional land in the plat. In a significant change from the current material plat change policy, proposed rule R12-15-708 eliminates the review of land use types and lot size. This change will improve the efficiency of the review while maintaining the focus of the review on assured and adequate water supply principles.

Subsection (A) provides that a certificate of assured water supply or a water report is applicable to the original plat for which the certificate or water report was issued and to a revised plat unless the plat changes are material pursuant to subsection (C) or (D) of R12-15-708. Subsection (A) does not represent a change from the current Department practices.

Subsection (B) explains how a certificate or water report holder should proceed if the plat is revised after a certificate is issued if changes are material. While this procedure is not included in the current material plat change policy, it more clearly explains the application procedure to the applicant, which will increase the efficiency of the material plat change review process. Subsection (C) specifies when changes to a plat are considered material. This section includes substantive changes from the current material plat change policy by eliminating land use and lot size changes as material plat change criteria. Review of land use and lot size changes are the most complicated criteria for

staff to review, yet are of minimal relevance to water management and the assured and adequate water supply program. Elimination of land use and lot size review will increase the efficiency and effectiveness of the material plat change review process.

Subsection (D) sets forth the procedure for reviewing changes to a portion of the original plat, which will improve the efficiency and effectiveness by clarifying the process. Subsection (E) explains the process by which the applicant may request that the Department review a plat to determine whether the changes to the plat are material outside of an application for a certificate or water report. Subsection (E) explains a service that the Department will provide to applicants. Subsection (E) addresses a procedural “service” only, and does not affect the substantive application of the material plat change review process.

#### **R12-15-709. Certificate of Assured Water Supply: Revocation**

Proposed rule R12-15-709 reorganizes current rules R12-15-709 and R12-15-710 as they apply to certificates of assured water supply in order to make the provisions easier to understand and to increase the effectiveness of the rules. Proposed rule R12-15-709 makes no substantive changes to current rules R12-15-709 or 710. Subsection (A) provides that a certificate may be revoked if an assured water supply does not exist. Subsection (C) includes the notification, review and appeal process for any certificate holder undergoing the revocation process.

#### **R12-15-710. Designation of Assured Water Supply**

Proposed rule R12-15-710 reorganizes current rules R12-15-702(A)(2) and (B) and R12-15-710(A) in order to make these rules easier to read and understand. No substantive

changes to current rules R12-15-702(A)(2), (B), or R12-15-710(A) were made in this rulemaking.

**R12-15-711. Designation of Assured Water Supply: Annual Report Requirements.**

**Review, Modification, Revocation**

This proposed rule reorganizes of R12-15-709 and R12-15-710 as they apply to designations of assured water supply in order to make these rules easier to read and understand. This proposed rule makes no substantive changes to current rules R12-15-709 and R12-15-710.

**R12-15-712. Analysis of Adequate Water Supply**

Proposed rule R12-15-712 is substantially similar to proposed rule R12-15-703, Analysis of Assured Water Supply. The current analysis of adequate water supply rules are scattered throughout the adequate water supply rules in current rules R12-15-716 and R12-15-723. Proposed rule R12-15-712 reorganizes the current rules regarding analyses and makes several substantive and procedural changes to the analysis process in order to increase the effectiveness and efficiency of the rules.

Subsection (F) allows a 10-year term for the analysis. The current analysis of assured water supply rules include no expiration date, although ADWR has included a 10-year term in each analysis it issues. Subsection (H) provides for renewal of the analysis for two five-year terms. The proposed rule sets forth factors for renewal: capital investment, material progress, and reasons for delay of the development. The proposed rule requires an extension for the two five-year periods if any of the foregoing factors are met. The Director may continue to extend the analysis for additional five-year periods, at the Director's discretion. The previous analysis rules do not provide for the extension of an

analysis. By providing a definite term and renewal procedures in this rulemaking, R12-15-712 provides analysis applicants and analysis holders with certainty in their planning processes, and increases the effectiveness and efficiency of the program.

Subsection (G) adds a provision that allows the analysis holder to notify the Department if they will not need all of the water reserved by the analysis. The current analysis rules did not include such a provision. This rule will allow the analysis holder to release unused water for future development.

### **R12-15-713. Water Report**

Proposed rule R12-15-713 reorganizes current rule R12-15-716 as it applies to a water report in order to make the rule easier to read and understand, as well as to increase the efficiency and effectiveness of the report application process.

Subsections (A) through (D) clarify current rule R12-15-716(A)(1), and are not intended to make substantive changes to the current rule. Subsection (A) provides that the current owner of the land must file the application. Subsection (B) details what information the applicant must submit with the application. Subsection (D) explains what the Director will review in order to determine the water demand for the proposed subdivision, and whether the applicant meets the requirements for the issuance of a water report.

Subsection (E) explains what criteria the applicant must demonstrate in order to obtain a determination that the subdivision has an adequate water supply. Subsection (E) adds a requirement that the applicant demonstrate financial capability to complete the necessary improvements for water distribution to the proposed subdivision. Financial capability is a new requirement for all water reports, but creates no additional burden because the

applicant must demonstrate financial capability to obtain plat approval or a public report. In addition, financial capability is required by current rule R12-15-717(B)(1)(e) in order for the Director to allow an applicant to lower the standard depth-to-static water requirement. This proposed provision increases the effectiveness of the rule because it ensures consumer protection: if the developer is not financially capable of constructing the necessary delivery system, an adequate water supply will not exist because the water supply will not be available to meet the proposed uses of the subdivision.

Subsection (H) states that the Director may review or modify a water report if new evidence is received regarding the criteria in subsection (E). The Director may not, however, review or modify the report if one or more lots in the affected subdivision have been sold. This is a substantive change from current rule R12-15-716. The purpose of this change is to protect consumers if water conditions change.

Subsection (I) provides that the owner of land that is the subject of a water report may request a modification of the water report. The ability of a water report holder to request a modification of a water report is a new subsection that simplifies and increases the efficiency of the water report application process.

#### **R12-15-714. Designation of Adequate Water Supply**

Proposed rule R12-15-714 is substantially similar to proposed rule R12-15-710. This proposed rule, based upon current rule R12-15-716(2), makes the rule easier to read and understand, and also increases the effectiveness and efficiency of the designation process.

Subsections (A) through (E) clarify and reorganize current rule R12-15-716(B)(2), but do not substantively change the rule. Subsections (A) and (B) specify what information the applicant shall include in its application. Subsection (D) explains what criteria the

applicant shall meet before the Director will issue the designation. Subsection (E) details what the applicant must demonstrate in order to obtain a designation from the Director.

**R12-15-715. Designation of Adequate Water Supply: Review, Modification, Revocation**

Proposed rule R12-15-715 reorganizes current rule R12-15-722 to make the rule easier to read and understand, but does not substantively change the current rule.

**R12-15-716. Physical Availability**

This proposed rule is included in current rule R12-15-703. This proposed rule completely reorganizes the physical availability requirement. The rule includes editorial changes to make the rule easier to read and understand. Additionally, as explained below, this rulemaking adds new as well as clarifying language that will make the rule more efficient and effective.

The Department's emergency rules, R12-15-701(10), R12-15-703(B)(1)(d)(iii) and R12-15-717(B)(1)(d)(iii), for which a Notice of Proposed Rulemaking was published on January 6, 2006, has been incorporated into this rulemaking as proposed R12-15-716(B)(3)(d). The emergency rules were necessary after the Department discovered an omission in the current rules that could have forced ADWR to ignore the projected demand of designated providers and the demand of issued certificates and water reports for which plats had not been recorded when reviewing subsequent applications for the physical availability of groundwater. Failure to consider those demands in a review of physical availability could lead to over-allocation of groundwater supplies. This situation would have removed the certainty of the existence of a designated provider or the issued

certificate or water report. The proposed rule removes this omission, thus protecting the program's effectiveness.

Subsection (K) revises rule R12-15-703(G) to clarify the procedure for determining a priority date for competing applications. This rulemaking will increase certainty for applicants who are concerned about reserving water for a proposed subdivision. Subsection (K) also explains the meaning of the phrase "complete and correct" for purposes of that subsection.

#### **R12-15-717. Continuous Availability**

Proposed rule R12-15-717 was previously included in current rule R12-15-703(C). This proposed rule reorganizes the continuous availability subsection of R12-15-703. This proposed rulemaking includes editorial changes to make the rule easier to read and understand. This rulemaking was not intended to make any substantive changes to the continuous availability subsections of R12-15-703.

#### **R12-15-718. Legal Availability**

This proposed rule was previously included in current rule R12-15-703(D). This proposed rule reorganizes the legal availability subsection included in R12-15-703 to make the rules easier to read and understand.

Subsection (D) of the proposed rule incorporates the Department's current practices regarding pending service area rights used to support a certificate of assured water supply or a designation of assured water supply.



Subsection (G)(2) is a new section that explains what information an applicant must submit to prove legal availability if the proposed source is Colorado River water, and the applicant has obtained an allocation from an entity that holds a contract for Colorado River water with the Secretary of the Interior. Because any use of Colorado River water requires a contract with the Secretary of the Interior, ADWR requires evidence of the contract. This subsection is intended to clarify the application requirements for these applicants, which in turn will make the application process more efficient for both the applicant and the Department.

#### **R12-15-719. Water Quality**

Proposed rule R12-15-719 replaces current rule R12-15-704. This proposed rule significantly simplifies and streamlines the process for demonstrating water quality as a component of any application for assured and adequate water supply.

Subsection (A)(1) allows the applicant to self-certify on the application that the designation applicant, or the certificate applicant's municipal provider, will be regulated by the Arizona Department of Environmental Quality ("ADEQ"), or another agency with equivalent jurisdiction, pursuant to A.R.S. § 49-351 et seq. This is a substantive change from current rule R12-15-704, which requires that the applicant submit information to the Director for review to determine whether the proposed water sources met existing state water quality requirements. Subsection (A)(1) eliminates the duplication of efforts between the Department and ADEQ, or its equivalent agency.

If the applicant will not be served by a municipal provider regulated by ADEQ or its equivalent agency, then, pursuant to subsection (A)(2), the applicant must submit an

analysis of water quality according to ADEQ regulations set by the Safe Drinking Water Act.

**R12-15-720. Financial Capability**

Proposed rule R12-15-720 makes substantive and editorial changes to the current financial capability rule, R12-15-707. Proposed rule R12-15-719 will streamline and simplify the process for proving financial capability as a component of any application for assured or adequate water supply.

Subsection (A)(1) allows the applicant to satisfy the proposed rule R12-15-719 if the applicant will submit its final plat to a “qualified platting authority.” The Department will consider a platting authority “qualified” if the Department confirms that the platting authority complies with A.R.S. § 9-463.01 or Title 11. This new rule provision will allow the Department to rely on the platting authority to carry out its obligations under A.R.S. § 9-463.01 or Title 11 and will eliminate the need for the applicant to provide a “Construction Assurance Form” to the Department, as is currently required. Discontinuance of the Construction Assurance Form will eliminate the need for applicants to wait for signatures from platting authorities, and will decrease the amount of review necessary by Department staff, resulting in increased program efficiency.

If an applicant will not submit its final plat to a qualified platting authority, subsection (A)(2) provides that the applicant may submit evidence that it has constructed adequate delivery, storage and treatment works, and water service is available to each lot. Subsection (A)(3) provides that the applicant may demonstrate that it has provided a performance bond to the platting authority for the entire cost of the adequate delivery, storage and treatment works. These subsections are not a change from R12-15-707.

Subsection (C) explains the financial capability requirements for designation applicants. There is no substantive change in this proposed rulemaking from current rule R12-15-707(F).

**R12-15-721. Consistency with Management Plan**

Proposed rule R12-15-720 reorganizes current rule R12-15-706. This proposed rulemaking includes editorial changes that make the rule easier to read and understand. No substantive revisions were made to this rule.

**R12-15-722. Consistency with Management Goal**

Current rule R12-15-705 (“Current 705”) is reorganized into six rules: R12-15-722 through R12-15-727. Current 705 explains how applicants can demonstrate that proposed groundwater use will be consistent with the management goal, as well as the method for determining the amount of the groundwater allowance and procedures related to extinguishment credits. This rulemaking organizes these subjects into separate rules for more efficient and effective implementation of these rules. In addition, this proposed rulemaking includes editorial changes that make the rules easier to read and understand.

R12-15-722 provides a general explanation of how applicants can demonstrate consistency with the management goal in the Phoenix, Pinal, Prescott, or Tucson AMAs. Rules for consistency with management goal in the Santa Cruz AMA are currently under development. Subsection (A) provides that the applicant can demonstrate consistency with management goal within the four AMAs through a combination of groundwater allowance, extinguishment credits, and groundwater that is consistent with the goal pursuant to statute.

Subsection (B) provides that the necessary calculations are performed on the basis of 100 years in the four AMAs, while subsection (C) provides that in the Pinal AMA the calculation is on an annual basis. Additionally, subsection (C) provides that unused consistent groundwater will roll over for use in later calendar years in the Pinal AMA. Subsection (E) provides for three additional types of groundwater that might be consistent with the goal upon application and after the groundwater is used: the drought volume exemption; water logging exemption; and the remedial groundwater exemption. Other than subsection (A)(3), which references statutory provisions for consistency with management goal, this subsection does not substantively change the Department's current rules.

#### **R12-15-723. Extinguishment Credits**

This proposed rule reorganizes current rule subsections R12-15-705(L), (N), and (P). This proposed rulemaking includes editorial changes that make this rule easier to read and understand.

New language was added in this rulemaking. Subsection (F) clarifies that extinguishment credits may be pledged to a certificate or designation after issuance. Subsection (G)(1) adds new language that provides for the automatic transfer of extinguishment credits if a certificate is assigned to a new owner. By automatically processing extinguishment credits as a part of the change of ownership process, proposed rule R12-15-723 will eliminate an unnecessary step in the change of ownership processes, thereby increasing the efficiency and effectiveness of the process. Subsection (G)(2) adds new language that allows for the transfer of extinguishment credits from a certificated subdivision to a

designated provider if the subdivision is later included in the designated provider's service area.

**R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits**

Proposed rule R12-15-723 reorganizes current rules R12-15-705(G), (K), (M), (O), and (Q). This proposed rulemaking includes editorial changes that make the rules easier to read and understand. No substantive changes were made in this proposed rulemaking.

**R12-15-725. Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits**

Proposed rule R12-15-724 reorganizes current rules R12-15-705(H), (M), and (O). This proposed rulemaking includes editorial changes that make the rules easier to read and understand. No substantive changes were made in this rulemaking.

**R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits**

Proposed rule R12-15-725 reorganizes current rules R12-15-705(B), (C), (D), (E), and (F). This proposed rulemaking incorporates language from Laws 1998, Ch. 86, § 1 related to groundwater allowance for designated providers, but does not otherwise include substantive changes.

**R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits**

Proposed rule R12-15-726 reorganizes current rules R12-15-705(G), (H), (I), (J), and (K). This proposed rulemaking includes editorial changes that make the rules easier to read and understand. No substantive changes were made to this rule.

**R12-15-728. Reserved**

**R12-15-729. Remedial Groundwater**

Proposed rule R12-15-729 is a new rule that incorporates Laws 1997, Ch. 287, § 52, and the Department's current Remediated Groundwater Incentive for Assured Water Supply Accounting substantive policy statement dated June 14, 1999. The incorporation of this substantive policy statement into rule will improve the efficiency and the effectiveness of the assured water supply program.

**R12-15-730. Assured and Adequate Water Supply Fees**

The proposed fee rule is based on the mandate of H.B. 2174, which allows the Department to create a self-funding source based on the new assured and adequate water supply fees. The fees for assured and adequate supply determinations have not changed since the effective date of the current rules, February 7, 1995. Stakeholders agreed with the Department that higher fees were necessary to support an assured and adequate water supply program that needs to be more efficient and effective in order to keep up with the tremendous growth in Arizona.

Among other items, the proposed fee structure includes a one-time fee for new certificate of assured water supply applications. This one-time-only fee will cover all subsequent applications to the Department based on that original certificate, such as assignment applications, change of ownership applications, and end-of-process letter requests.

For more detailed information regarding the proposed fees, please see the Summary of the Economic Impact Statement, included as item #9 of this notice.

**7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

None

**9. The summary of the economic, small business, and consumer impact:**

**A. An Identification of the Proposed Rulemaking**

The Department of Water Resources (“Department”) is modifying certain rules, repealing other rules, and adopting new rules under A.A.C. Title 12, Chapter 15, Article 7, all relating to the Assured and Adequate Water Supply (AAWS) program.

During the 2005 legislative session, HB 2174 was enacted by the Legislature and signed into law by the Governor. In consultation and collaboration with the public advisory committee prescribed in HB 2174, the Department has undertaken a comprehensive review of its AAWS rules and is proposing modified rules that are designed to streamline and make more efficient the AAWS program and combine and simplify certain types of fees for service, all designed to quicken, shorten, and simplify the application and review process, add clarity to and reduce confusion about AAWS program requirements and

procedures, and thereby facilitate more timely completion of real estate development schedules and faster satisfaction of public demand for real estate.

Taken together, the Department estimates that the modified rules will result in economic benefits to consumers, political subdivisions, agencies and small and large business as follows:

- Repetitive processes will be eliminated, fewer items will be required to qualify, and fewer steps will be involved in the approval process, saving time and effort.
- Elapsed calendar days to complete some AAWS services will shorten, significant time will be saved.
- Added convenience factors will make it easier and less confusing for political subdivisions, businesses, and agencies to complete the application and review process.
- Certainty, clarity, and transparency in the rendering of AAWS services will improve.

During the 2001-05 period, the Department estimates that AAWS fees collected have covered less than 10% of actual AAWS program costs. Stakeholders agreed with the Department that higher fees were necessary to support an AAWS program that needed to be more efficient and effective in order to keep up with the tremendous growth occurring in Arizona. Following A.R.S. § 45-580, the Department proposes in this rulemaking to increase the fees it charges for the AAWS services it provides to the development, home builder and water provider communities, and through them, the general public, to more fully cover the costs and expenses of the Department in administering the AAWS program and to provide a means to add FTEs to a program struggling to keep pace.



Specifically, the Department proposes to repeal the fee structure for the Adequate Water Supply Program that is set out in current rule R12-15-725 and also to repeal the fee structure for the Assured Water Supply Program that is set out in current rule R12-15-714. Those fee structures will be replaced with the new and streamlined fee structure in proposed rule R12-15-730. By doing so, the Department expects that the total fees it collects from those affected by the AAWS Program will increase approximately nine-fold. The fees are a product of negotiations with stakeholders. The fee structure is based on the number of the estimated number of future applications that will be received by type and the estimate future costs of administering a streamlined and more efficient AAWS Program. The new fees will be used by the Department for the costs and expenses of administering the Program. Those AAWS services - certificates of assured water supply and water adequacy reports - that will most benefit from the streamlining are also apportioned most of the increased fee collections. The table below shows an abbreviated summary of the repealed fees and the entirety of the proposed new streamlined fees:

### **Fee Proposal**

Service	Repealed	Proposed – R12-15-730
	(Abbreviated)	
Certificates	\$1000 cap. \$250 for the first 20 lots. \$0.50 for each lot thereafter.	\$3000 for the first 20 lots. \$3.00 for each lot thereafter. \$5000 cap.
Assignment	\$1000 cap. \$250 for the first 20 lots. \$0.50 for each lot thereafter.	For certificates issued after the effective date, none – combined into certificates fees. For certificates issued prior to the effective date, \$1000 cap. \$250 for first 20 lots. \$0.50 for each lot thereafter.
Reissuance of a certificate (issued before effective date of rules) pursuant to R12-15-704(G)		For certificates issued after the effective date, none – combined into certificates fees. For certificates issued prior to the effective date, \$1000 cap. \$250 for first 20 lots. \$0.50 for each lot thereafter.
DAWS	\$10,000 cap. \$500.00 for the first 500AF. \$0.50/AF for next 500 AF. \$0.25AF thereafter.	\$1000.00 for the first 1000AF. \$0.50/AF thereafter. \$10,000 cap.

DAWS (Modification)	\$500.00	\$500.00 for a “minor modification.” <sup>1</sup>  Otherwise, same as DAWS: \$1000.00 for the first 1000AF, \$0.50/AF thereafter.  \$10,000 cap. Applied only to the incremental volume above the original designated volume.
DADE	\$8000.00 cap. \$400 for the first 1000AF.  \$0.25/AF thereafter.	Same as DAWS.
DADE (Modification)		Same as DAWS modification.
Water Report	\$800.00 cap. \$200.00 for the first 20 lots. \$0.50 per lot thereafter.	\$900.00 for the first 20 lots. \$2.00 per lot thereafter. \$2000.00 cap.
Analysis of Assured Water Supply; Analysis of Water Adequacy	\$1000.00	\$7500.00
PAD	\$1000.00	\$5000.00
Type A		\$250 for first 20 lots. \$0.40 for each lot

reclassification <sup>2</sup>		thereafter. \$1000.00 cap.
Material plat change review		\$250.00

1. A minor designation modification does not involve re-evaluation of physical, legal, or continuous availability or consistency with goal. The higher fee is applied to a designation modification–DAWS or DADE – that requires re-evaluation of physical, legal, or continuous availability, or goal consistency (goal consistency does not apply to adequacy designations).
2. Classification as a Type A Certificate issued before the effective date of the rules and not included in an assignment application.

A reissuance of a certificate pursuant to R12-15-704(G), a Type A certificate reclassification (for a certificate issued before the rules are effective and not included in an assignment application), or for a material plat change review are optional services offered to certificate holders and the Department anticipates that few applications will be submitted. In most cases, applicants would seek an assignment rather than a reissuance, so the economic impact will be *de minimis*. The reclassification and material plat change review are included in other application reviews at no additional cost and applicants will not often request these services separately. The fees for these services are relatively low and the economic impact will be *de minimis*.

**B. A Brief Summary of the Information Included in the Economic, Consumer, and Small Business Impact Statement**

Using a projected level of AAWS Program services, the Department estimates that the state will collect a grand annual total of approximately \$1.475 million using the fee structure proposed in R12-15-730. Using the fees set forth in current rules R12-15-714 and R12-15-725, the Department estimates that it would have collected approximately \$165,000 annually while rendering the same projected level of services. Persons applying for AAWS services will pay increased costs of approximately \$1.31 million annually.

The same persons will reap benefits from an AAWS Program that is streamlined, more efficient, quicker, shorter, clearer, simpler, and one that facilitates more timely completion of real estate development schedules and faster satisfaction of public demand for real estate. These benefits are not quantified, but their value is apparent to the development, home builder and water provider communities, who have agreed to pay these increased costs to streamline an AAWS program that needs to be more efficient and effective to keep up with the tremendous growth occurring in Arizona.

The following are public services currently provided by the AAWS program:

Certificates	Certificates of Assured Water Supply, including new certificates, changes of ownership, and conformance letters
DADE	Designations of Water Adequacy, including new and modifications
DAWS	Designations of Assured Water Supply, including new and modifications
Water Reports	Water Adequacy Reports

AnAs	Analyses of Assured Water Supply
PAD	Physical Availability Determinations
AnAd	Analyses of Water Adequacy

#### B.1. Persons Directly Benefiting from the Proposed Rulemaking

The more efficient and effective AAWS program will benefit real estate developers, individual partnerships, corporations, large and small businesses involved in home building and community development, and water suppliers including political subdivisions, private water companies, and irrigation districts serving municipal water. AAWS rule streamlining is especially designed to shorten the time and administrative burden of real estate developers and home builders who apply for certificates of assured water supply. Certificates constituted about 70% of AAWS program services during the 2003-05 period. Revenue accumulated from the proposed fees will allow the Department to increase its staffing for the AAWS program so that it can better manage the tremendous growth Arizona is experiencing. The Department and other state agencies affected by the AAWS program, such as the Arizona Corporation Commission, the Arizona Department of Real Estate and the ADEQ also will benefit from a shortened, simplified, streamlined, and more efficient application and review process, involving fewer steps, less repetition, reduced numbers of applications, and less waiting time. The general public will benefit from swifter and more certain satisfaction of its demand for real estate, while enjoying the certainty that an assured or adequate water supply for 100 years has been identified, and in AMAs, that groundwater resources are being properly managed.

#### B.2. Persons Directly Bearing the Costs of the Proposed Rulemaking

Persons applying for AAWS services will pay increased costs. The table below shows numbers of AAWS services rendered over the 2001-05 period, and a projection for 2005-06. Looking at the table, if each service rendered represented one real estate development, approximately 513 municipal water providers, private water companies, real estate developers, corporations, sub-dividers, and other similar persons statewide paid AAWS fees in 2004-05.

	Numbers of AAWS Services Rendered				
AAWS SERVICE	FISCAL YEAR				
	2001-02	2002-03	2003-04	2004-05	2005-06 <sup>1</sup>
CAWS	112	149	302	355	251 <sup>3</sup>
DADE	2	1	0	4	13 <sup>2</sup>
DAWS	9	6	10	3	
WAR	91	67	73	114	125
AnAs	6	10	20	20	22
PAD	8	4	6	0	7
AnAd	1	2	4	17	19
TOTAL	229	239	415	513	437

1. Projected. The projections are further detailed, below.

2. All Designations taken together, e.g. DADE + DAWS.

3. Presently, Certificate changes of ownership are assessed fees and counted separately from new certificate applications. Under the proposed streamlining, these services are combined, resulting in a smaller number of projected certificate services.

### B.3. Cost-Benefit Analysis

The streamlined AAWS rules will facilitate the completion of real estate development schedules in a more timely manner and reduce per-service processing times spent by multiple agencies. The AAWS rule streamlining is especially designed to shorten the time and administrative burden of applicants for certificates and water reports, typically real estate developers and homebuilders. The general public and those employed in the housing industry will benefit from swifter satisfaction of real estate demand. Following the directive in A.R.S. § 45-580, the Department proposes to increase its fee collections to a level roughly equal to about two-thirds of its actual costs to administer the AAWS program. Stakeholders have agreed to allow the Department the opportunity to identify its AAWS program costs over the next few years and review at some future time the adequacy of the fee levels proposed in this rulemaking. Persons using AAWS program services will pay increased fees per service. Total AAWS fees paid to the Department during a given year will also increase.

#### B.3.1. Agencies

The Department estimates its full-time equivalent staff (FTE) and associated costs to administer the AAWS program as follows:

AAWS PROGRAM FTEs AND COSTS				
	All ADWR	All ADWR	WMD &	WMD Only



	2004-05	Projected	Hy Projected	Projected
FTE's – Number	14.4	17	14	10
Program Cost	\$1,998,800	\$2,212,200	\$1,739,400	\$1,189,900

The 2004-05 figures represent actual Department costs associated with administering the AAWS program, including legal staff and one manager. The projections represent the Department's outlook for 2005-06 and beyond as of this writing and include one manager, but do not include legal staff.

Total fees collected for AAWS program services are expected to greatly increase under the new fee structure proposed in R-12-15-730. The Department estimates that the average amount of annual fees collected over the 2001-05 period would have increased by about eight times, from an average of \$106,575 to an average of \$830,033, an average annual increase of about \$723,500. With the new fees and the Department's projected demand for AAWS services, future fees collected would increase from about \$165,000 to about \$1,474,800 annually, an increase of about \$1,309,800 or ninefold. These increased revenues will allow the Department to manage more effectively the AAWS program, reduce the administrative burden to applicants and therefore keep pace with the growth of development. The AAWS program streamlined procedures will reduce both calendar and staff days required per service, thereby reducing the Department's administrative burden. The streamlined procedures are expected to reduce the number of staff and calendar-days typically required to render services at other state agencies, in some cases significantly.

#### B.3.2. Political Subdivisions

Cities, towns, private water companies, community water systems, and in some cases water districts and home owner associations typically secure their water supplies via Designations of Water Adequacy (“DADE” – outside of Active Management Areas) and Designations of Assured Water Supply (“DAWS” – inside of Active Management Areas). These water providers are located statewide throughout Arizona. In recent years, DADE and DAWS together have represented about two to five percent of annual AAWS services rendered and accounted for about four to seven percent of total annual AAWS fees collected.

The fees assessed to political subdivisions for both DADE and DAWS would have increased during recent years and are projected to increase with the proposed new fee structure. For example, during 2004-05, the Department actually collected \$6,200 from seven DADE/DAWS services, but would have collected \$16,680 under the proposed increased fees. The seven services in 2004-05 represent a recent low in DADE/DAWS activity. Based on knowledge it presently has, the Department estimates that it would collect \$66,300 from 13 DADE/DAWS services during 2005-06 with present fees, and that this total would increase to \$76,600 with the proposed fees.

On a per acre-foot basis, over the 2001-05 period, 35 designations totaled about 410,000 acre-feet, at an average total cost of about \$0.06 per acre-foot. If the proposed new fee structure had been in place during 2001-05, the average cost would have been about \$0.24 per acre-foot. Total fees collected from the 35 designations were about \$24,300, and would have risen to about \$97,000, a four-fold increase.

Designated providers will pay these costs as AAWS program services are rendered. However, since most of these providers are cities, towns, and similar municipal water

providers, the general public will be the ultimate cost-bearer as the providers adjust rate structures and pass the higher costs through to the public via approved rate hikes.

For example, seven 2004/05 designations involved approximately 22,000 acre-feet of municipal water. Using the rule of thumb that one acre-foot is enough water to supply one to two average homes, about 22,000 to 44,000 households would have ultimately paid increased fees totaling about \$10,480 or an increase of about \$0.50 to \$1.00 per household for the water designated in 2004/05, if the proposed new fee structure had been in place.

Persons applying for new designations or to modify existing designations will benefit from the AAWS streamlining through shortened processing times, reduced backlog, and more focused attention of AAWS program staff. The streamlined rules are clearer and more transparent. Application, annual report, and special exemption reviews are all expected to speed up. Designation services are relatively few compared to certificates, and designations are often more complicated. In some past cases, this has resulted in relatively more attention to the large backlog of certificate applications. This unfortunate situation is expected to abate under the proposed rules. Faster designation processing is expected to benefit those political subdivisions who rely on real estate development fees to support other public services, as those political subdivisions will be able to more quickly satisfy the demand for real estate.

#### B.3.3. Business, Including Small Business

Outside of designated service areas, real estate developers, including general partnerships, limited liability corporations, general corporations, trusts, other large and small businesses, private individuals and any other persons who sell subdivision lots to

home buyers or record plats statewide typically secure their water supplies via certificates inside an AMA and water reports outside an AMA. These same real estate developers or any Arizona landowner with a master plan might apply for an Analysis of Assured Water Supply (“AnAs,” inside an AMA) or an Analysis of Water Adequacy (AnAd, outside an AMA).

In recent years, certificates and water reports together have represented almost 90% of AAWS services rendered and accounted for about 75% of total AAWS fees collected. Under both current and proposed rules, a small certificate or water report involves 20 lots or less.

In recent years, AnAs and AnAd together have represented about three to five percent of AAWS services rendered and accounted for about seven to fourteen percent of total AAWS fees collected.

#### B.3.3.1 Probable Costs to Business, Including Small Business

##### B.3.3.1.1 Certificates – CAWS

There were 32 new small and 219 new large certificate applications from businesses in 2004-05. If one lot equals one house, about 44,000 new houses will eventually be available for sale to housing consumers under certificates applied for in 2004-05.

The ability of the real estate developer to pass increased costs through to ultimate buyers depends on the parameters of the underlying demand for housing. The most likely scenario is that both housing buyers and real estate developers will share payment of certificate fees that would have increased during recent years and are projected to increase with the proposed new fee structure. For example, during 2004-05, the Department actually collected \$105,000 from 355 certificate services, but would have

collected about \$843,300 under the proposed increased fees. The 355 services in 2004-05 represent an all-time high in certificate activity. Under the proposed new fees, the Department estimates that it will collect about \$927,600 from 251 new certificate services during 2005-06, whereas, with present fees, this total would be just \$115,000.

During the 2001-05 period, small certificates have averaged 12 lots in size. This translates into a small certificate per-lot cost of  $\$250/12 = \$20.83$  under the present fee structure vs. a small certificate per-lot cost of  $\$3,000/12 = \$250$  under the new proposed fees. Over the same period, total small certificate fees paid would have increased by six to twelve times under the new fee structure as compared to the present fees.

Presently, large certificates are subject to both minimum fees and lot charges and also repetitively pay fees as ownership changes during processing. Recently, large certificates have averaged about 200 lots in size. Using that figure, the average per lot cost under the new rules would be  $\$3,000/200 + \$3.00 = \$18.00$  per lot after the first 20 lots, as compared to  $\$250/200 + \$0.50 = \$1.75$  per lot under the present rules. Total large certificate fees paid from 318 applications during 2004-05, for example, would have increased about eightfold, from a total of \$95,750 to a total of \$747,285. Only 219 new certificate services would have paid fees. Ninety-nine large certificate applications experienced a change of ownership during the processing and repetitive fees on them would have been eliminated under the proposed new fees.

#### B.3.3.1.2 Water Adequacy Reports

There were 34 small and 80 large water reports prepared for businesses in 2004-05. Supposing again that one lot equals one house, about 11,000 new houses will eventually be available for sale to housing consumers under water reports applied for in 2004-05.

Under the proposed new fee structure, water report fees would have increased during recent years and are projected to increase in the future. For example, during 2004-05, the Department actually collected \$27,100 from 114 water report services, but would have collected about \$120,275 under the proposed increased fees. The 114 services in 2004-05 represent an all-time high for water reports, and are projected to continue to increase. Under the proposed new fees, the Department estimates that it will collect about \$132,000 from 125 new water reports during 2005-06, whereas, with present fees, that total would be about \$29,800.

During the 2001-05 period, small water reports (those 20 lots or less in size) have averaged about 13 lots in size. This translates into a small water report per lot cost of  $\$200/13 = \$15.38$  under the present fee structure vs. a small water report per lot cost of  $\$900/13 = \$69.23$  under the new proposed fees. Over the same period, total small water report fees paid would have increased by about 4.5 times under the new fee structure as compared to the present fees.

The average size of large water reports varied between 93 and 130 lots over the 2001-05 period. For a 100-lot water report, the average per lot cost after the first 20 lots under the new rules would be  $\$900/100 + \$2.00 = \$11.00$  per lot, as compared to  $\$200/100 + \$0.50 = \$2.50$  per lot under the present rules. With the proposed new fees, total large water report fees paid during 2004-05, for example, would have increased about 4.4 times, from a total of \$20,300 to a total of \$89,674.

#### B.3.3.1.3. Analyses of Assured Water Supply and Water Adequacy

Under the proposed new fee structure, the cost for AnAs and AnAd would increase from \$1,000 to \$7,500 per analysis. The numbers of analyses have been steadily increasing in

recent years, reaching a combined 37 in 2004. A 10% increase, to 41 analyses is projected by the Department. In 2004-05, the Department collected \$39,000 from the 37 analyses. With the new fee structure, it would have collected \$277,500, about a sevenfold increase.

#### B.3.3.2. Probable Benefits to Business, Including Small Business

The Department expects certificate services to continue to increase in coming years and is presently experiencing an historically large certificate backlog. Under the old rules, new applications, changes of certificate ownership, and partial certificate assignments were treated separately, with separate application and qualification processes and separately assessed fees. Each time one of these events occurred, that application moved back to the end of the service queue. Under the streamlined rules, fees for new, changed, and assigned certificate services will be combined into a single new application fee.

If there is a plat change during the time a water report is being processed, the streamlined procedures will shorten processing times by eliminating repetitive plat change reviews. The Department expects that the streamlined rules will shorten some certificate and water report processing times by four to twelve weeks while at the same time adding convenience and transparency and reducing public confusion.

Draft rules R12-15-703 and R12-15-712, pertaining to analyses of assured water supply and water adequacy allow the State Land Department to apply for an analysis of assured water supply.

The draft rules clarify the application procedure by identifying what information the applicant is required to provide in the application submitted to the Department, what the applicant must demonstrate in the application, and how the Director will evaluate those

items in making her or his determination. They also clarify what the applicant must submit to prove land ownership and set forth who qualifies as an authorized signatory on the application.

The draft rules codify the long-standing Department policies on time limits for analyses and renewals. They set forth factors for consideration in the renewal. The Director is given added flexibility. The inclusion of specific renewal terms will assist developers in planning. In addition, the inclusion of a time limit and renewal terms will terminate those analyses that do not move forward with development, and free up additional water for other development. These measures provide greater certainty to the applicant, the Department and the public that the applicant who is “locking up” water is doing so with a viable plan for water delivery to the applicant’s proposed subdivision.

#### B.3.4. Physical Availability Demonstrations – Probable Costs and Benefits

A water company regulated by the Arizona Corporation Commission or any member of the general public might apply for a Physical Availability Demonstration (“PAD”), which is an analytical report prepared by Department staff. The probable costs and benefits associated with these analytical reports apply equally to agencies, political subdivisions, and businesses, including small businesses.

During normal recent years, the Department has prepared six or seven PAD reports per year, representing some two to three percent of AAWS service numbers. Over the 2001-05 period, the Department collected a total of about \$18,000 in PAD fees. That total would have increased by a factor of five under the proposed new fees, to about \$90,000. Persons requesting a PAD will benefit from the AAWS streamlining through shortened



report preparation times, reduced backlog, and more focused attention of AAWS program hydrologists.

#### B.3.5. Employment

The Department thinks it highly unlikely that the proposed fee increases will have any appreciable impact on real estate development activity or consumer demand for real estate, and so will not appreciably impact employment in businesses or political subdivisions. The Department anticipates adding a small number of additional FTEs to the AAWS Program so that staffing levels will be more appropriate to the level of work.

#### B.3.6 State Revenues

If the proposed new fee structure had been in place during 2001-05, the state would have collected an annual average of about \$830,000. During 2001-05, the state did collect an annual average of about \$106,600, or about one-eighth of what it would have collected. The Department projects annual fee collections of about \$1.475 million under the proposed structure, about \$1.31 million more annually than the \$165,220 it would collect annually with present fees. The projections are based on application experience over the 2001-05 period, which is a realistic picture moving into the future, subject to the natural fluctuations in the real estate market. The stakeholders and the Department have agreed that the Department will reassess the fees during the next three years to ensure that the fees are appropriate.

#### B.3.7. Alternative Methods of Achieving the Proposed Rulemaking

The Department engaged in a long public dialogue with the regulated community as it rewrote the AAWS rules. Many comments were received and many alternatives were

considered, some less intrusive or costly, some more. The present proposed rules emerged from the public participation process, in preference to other alternatives.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules:**

There are no substantial changes between the proposed rules and the final rules. The Department made various typographical corrections in response to public comments. Minor grammatical and formatting changes were made at the request of Governor's Regulatory Review Council ("GRRC") staff.

The Department also made the following clarifying changes:

The Department added language to the definition of "projected demand" (R12-15-701(57)) to clarify that current demand is not included in projected demand. This is not a substantial change because the definition of projected demand refers to the demand of "customers reasonably projected to be added and plats reasonably projected to be approved," and current demand only includes the demand of "existing uses."

The Department added language to R12-15-701(59) (definition of "purchase agreement") to make the definition more consistent with the examples given in the definition. Specifically, the definition lists a deed of trust and a subdivision trust agreement as examples of purchase agreements. Those documents may only provide for the potential

purchaser to “acquire an interest in” the property, rather than for the potential purchaser to purchase the property outright.

The Department added language to R12-15-704(H)(1)(b) to clarify that the Department will issue a “Type A” certificate if the municipal provider will serve groundwater to the subdivision pursuant to a pending service area right and the provider holds the well permit, or will hold the well permit in the future. The rule as originally proposed required the Director to issue a certificate as a Type A certificate if the subdivision’s demand would be met with groundwater served pursuant to a municipal provider’s pending service area right, if the municipal provider holds the well permit. Although the municipal provider will be required to obtain a service area well permit once the service area right is established, the Department will not issue a service area well permit to the municipal provider until that time. This is not a substantial change because the determining factor is still whether the municipal provider holds the well permit at the time that the service area right is established.

The provisions regarding plat changes, particularly changes to portions of a plat, were revised to clarify the procedure for reviewing plat changes, in response to comments requesting clarification. In the Notice of Proposed Rulemaking, some of the language regarding changes to a portion of a plat were included in R12-15-705(E) and R12-15-706(F). That language has been moved to R12-15-708(D), which also addresses changes to portions of a plat. The language was reorganized to include all provisions relating to plat change reviews in the same rule, thereby clarifying the requirements. There are no

substantive changes to any of these sections. Additionally, the phrase “shown on” is added to the last sentences of R12-15-705(D) and (E) and R12-15-706(D) and (F) in order to clarify that the number of lots and the estimated water demand may increase in actuality, according to the criteria set forth in R12-15-708, but the Department will not change the numbers on the certificates that are issued.

The Department made clarification changes to R12-15-711(F)(3) and R12-15-715(E)(3) to include “another governmental entity with equivalent jurisdiction” in addition to ADEQ, consistent with the related provision in R12-15-719(A)(1). Additionally, a reference to A.A.C. Title 18, Chapter 4 was added to R12-15-711(F)(3), R12-15-715(E)(3) and R12-15-719 to clarify that the Department is only considering a determination of significant noncompliance with water quality requirements, as opposed to unrelated requirements enforced by ADEQ. Finally, the Department has changed “notified the director” in R12-15-711(F)(3), R12-15-715(E)(3) and R12-15-719 to “determined, after notice and an opportunity for a hearing,” to clarify that the Department will not revoke a designation until the administrative process is complete.

The Department added new subsections R12-15-711(I) and R12-15-715(H) to clarify that a designation of assured or adequate water supply issued prior to the effective date of the rules will not be revoked solely because the rule numbers cited in the decision and order have changed.

The Department revised R12-15-716(K), R12-15-729(E) and R12-15-729(I)(2) by changing the word “acceptable” to “accurate” and changing the passive to active voice. The change does not alter the effect of the rule, but clarifies its meaning.

The Department added “or augment” to R12-15-717(C)(5) to make the provision consistent with the definition of “drought response plan.” The term “drought response plan” is defined in R12-15-701(34) as “a plan describing a variety of conservation and augmentation measures.” Therefore, the rule language in R12-15-717(C)(5) was modified to clarify that the applicant should submit “a drought response plan that the director has determined will conserve *or augment* a volume of water equal to the volume of water that is subject to drought.”

The Department added language to R12-15-718(B)(3)(b) to clarify that the Department will only accept an order preliminary as evidence of the municipal provider’s authority to serve the subdivision if the order preliminary authorizes the municipal provider to provide water service. This is not a substantial change, and is consistent with the intent of R12-15-718(B)(3) (requiring evidence that the municipal provider is authorized to serve water to the subdivision) and the related language in R12-15-718(C) (accepting evidence of an order preliminary “authorizing the applicant to serve the proposed use” for purposes of an application for a designation).

The Department also changed “appropriate” in R12-15-718(D)(2) to “applicable,” to clarify that the non-irrigation grandfathered right must be “applicable” to the use, both in

type and location. The term “appropriate” could be considered vague, whereas the term “applicable” clarifies that the right should be “applicable” to the proposed use. The change does not alter the effect of the rule.

Language is added to R12-15-720(C)(3) to confirm that the capital improvement plan need only provide for commencement of construction in a timely manner, and to clarify that the rule does not require that the construction be completed during the five-year period if the facilities will not be required during that time. Language has also been added to clarify that the Department will accept evidence of financing mechanisms as evidence of financial capability. These changes clarify the Department’s current practice and intent in drafting the rule provision, and were added in response to comments received from stakeholders requesting clarification.

The Department revised R12-15-710(E)(5), R12-15-711(F)(2), R12-15-714(E)(5) and R12-15-715(E)(2) to consistently use the defined term “adequate delivery, treatment and storage works,” rather than “all necessary delivery, treatment and storage facilities.”

In R12-15-726(B)(2), the Department added language to clarify how extinguishment credits will be calculated for Type 1 non-irrigation grandfathered rights. Although the language in the current rules has always applied to Type 1 non-irrigation grandfathered rights as well as irrigation grandfathered rights, the phrase “or the number of acres to which the extinguished right is appurtenant” is technically more accurate with respect to Type 1 non-irrigation grandfathered rights.

The Department made changes to R12-15-729 to consistently use the defined term “remedial groundwater,” rather than “groundwater.”

**11. A summary of the comments made regarding the rules and the agency response to them:**

The following is a summary of the comments received by the Department during the public comment period and the Department’s responses to the comments. The comments and responses are grouped according to the rule to which they relate. The name of the party who submitted the comment is shown in parentheses after the comment. In some cases, more than one party submitted a comment; in those cases, each party submitting the comment is listed after the comment.

Comment:

Proposed rule R12-15-701(1) defines "abandoned plat" as "a plat for which a certificate or water report has been issued and that will not be developed because . . . Legal restrictions will preclude approval of the plat." What types of legal restrictions would preclude approval of the plat? (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

Legal restrictions that would preclude plat approval will vary, particularly with respect to

each platting authority. For example, a drastic change in zoning density or other zoning changes that have occurred since the certificate was issued might preclude approval of the plat. These legal restrictions are evaluated on a case-by-case basis to determine whether the platting authority would approve the plat, with or without a variance, and whether a variance is reasonably available. If an applicant seeks to exclude abandoned plats from the review of physical availability, the applicant should submit evidence of the legal restrictions that would preclude plat approval. The Department may consult with the platting authority regarding the legal restrictions.

Comment:

Proposed rule R12-15-701(38) defines "estimated water demand." Is the estimated water demand a legal limitation on the volume of water that may actually be required to meet the demand of the subdivision or use? (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc.)

Response:

No, the estimated water demand is not a legal limitation on the volume of water actually used. The estimated water demand is used to determine whether an assured water supply (or adequate water supply) exists to meet the estimated water demand of a subdivision, service



area, or proposed use.

Comment:

Proposed rule R12-15-701(49) defines "municipal water provider" by referencing A.R.S. § 45-561. The statutory definition defines the term to include a city, town, private water company or irrigation district that provides water for non-irrigation use. Does the Department interpret the definition of "municipal provider" to subject deliveries from an irrigation district to yards, parks, golf courses, etc., to assured water supply requirements and replenishment obligations? (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

In most cases, the Department includes such deliveries in a determination of assured water supply, particularly in the case of a designation applicant that is an irrigation district, or in the case of an irrigation district delivering water to a new subdivision. If those deliveries are included in the determination, the applicant must demonstrate that all requirements are met for all demand, including the demand that will be met with deliveries from an irrigation district.

Comment:

Proposed rule R12-15-701(49) defines "municipal water provider" by referencing A.R.S. §

45-561. The statutory definition defines the term to include a city, town, private water company or irrigation district that provides water for non-irrigation use. Does this definition include community facilities districts? (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

Yes. A community facilities district established pursuant to A.R.S. §§ 48-701, et seq., "that distributes or sells groundwater is a private water company only for purposes of title 45, chapters 2 and 3.1." A.R.S. § 48-708(B). Additionally, the definition includes county improvement districts established pursuant to A.R.S. §§ 48-901, et seq., because such districts "shall have the same authority and responsibility as an incorporated city or town pursuant to the provisions of title 45." A.R.S. § 48-909(C).

Comment:

Proposed rule R12-15-701(59) defines "purchase agreement." In order to clarify the definition and make it more consistent with the examples given, add "or acquire an interest in" after "purchase" and before "real property." (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

The Department agrees and will make the suggested change to clarify the language.

Comment:

The definition of "projected demand" should be revised to clarify that current demand is not included in the calculation. (Arizona Municipal Water Users Association.)

Response:

The Department agrees that this additional language will clarify how projected demand is calculated (i.e., that projected demand does not include current demand) and will add this language. Please note that this does not change the meaning of the term “projected demand.” The definition of projected demand refers to the demand “of customers reasonably projected to be added and plans reasonably projected to be approved.” Current demand is related to “existing uses,” which are not “projected to be added” or “projected to be approved.”

Comment:

Can the holder of an analysis issued prior to the effective date of the revisions apply for an extension of the term of the analysis pursuant to proposed rule R12-15-703, subsections (H) or (I)? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC.)

Response:

Yes; the Department will apply proposed rule R12-15-703, subsections (H) and (I) to existing analyses, which expire ten years after issuance.

Comment:

Will an extension of an analysis pursuant to proposed rule R12-15-703, subsections (H) or (I) cause a change in the priority date for the analysis? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC.)

Response:

No, the priority date will remain the same.

Comment:

The rules should address the situation in which a developer obtains an analysis before a municipal provider applies for a designation. In particular, the rules should provide a mechanism under which the "reservation" of water in an analysis can be transferred to a designation. (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc.)

Response:

The proposed rules allow the Department to reduce the volume of water reserved for an analysis at the request of an analysis holder. See R12-15-703(G); R12-15-712(G). The analysis holder can submit the request when a municipal provider has submitted an otherwise complete and correct application, to allow the volume of water to be included in the designation. The Department will not change the rules in response to this comment, but is willing to discuss this issue, along with other potential solutions, in future discussions with stakeholders.

Comment:

Proposed rule R12-15-704(H) classifies certificates as either "Type A" or "Type B." Are holders of certificates issued prior to the effective date of the rules or holders of Type B certificates required to apply for classification as a Type A certificate? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC.)

Response:

No, a certificate holder is not required to apply for classification as a Type A certificate. However, if the certificate holder anticipates a change of ownership of all or part of the

subdivision before the lots are sold to individual buyers and the certificate meets the requirements for classification as a Type A, it would be more efficient and beneficial for future owners to voluntarily seek classification as a Type A certificate.

Comment:

Proposed rule R12-15-704(H) classifies certificates as "Type A" or "Type B." Will Type A and Type B certificates be equally valid? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC.)

Response:

Yes. A Type A certificate and a Type B certificate are each a determination by the Department that an assured water supply exists for the subdivision, and both are valid for purposes of recording a plat or issuing a public report. The Type A/Type B classification is for administrative purposes and is intended to increase the efficiency of the program. The classification only affects assignment applications pursuant to proposed rules R12-15-705 and R12-15-706 and exemptions under proposed rule R12-15-704(K).

Comment:

In proposed rule R12-15-704, subsections (F)(6) and (F)(7) refer to the "proposed use of groundwater." Does this mean the proposed use of groundwater for the "subdivision" as

defined in proposed rule R12-15-701(62)? (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc.)

Response:

Yes.

Comment:

When a certificate is assigned (partial assignment or full assignment), the total number of lots and the total estimated water demand of the resulting certificate(s) will equal the number of lots and estimated water demand of the certificate being assigned. Please confirm that non-material changes to the number of lots or estimated water demand will not appear on the assigned certificates. Will the certificate still be valid for purposes of recording a plat or issuing a public report if the number of lots or water demand has changed, and that change is not material? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC.)

Response:

The Department will not change the number of lots from the certificate being assigned to the assigned certificate (or total number of lots, in the case of partial assignments), and will not

change the estimated water demand on the face of an assigned certificate, though the actual number of lots or actual water demand may have changed. A non-material change to the number of lots or the estimated water demand does not affect the validity of the certificate for any purpose. Please see proposed R12-15-708 for the criteria for a material plat change. The Department will change proposed rules R12-15-705(D), R12-15-705(E), R12-15-706(D) and R12-15-706(F) to state that the Department will not change the estimated water demand or the number of lots “shown on” a certificate, to clarify that the Department will not change the assigned certificate and eliminate the possibility that the language could be misinterpreted to prohibit such a change to the plat itself. Additionally, when the Department reviews plat changes in the case of a partial assignment, the Department will issue a certificate for the portion of the subdivision being assigned showing the number of lots and estimated water demand according to the plat of the assigned portion submitted with the assignment application. The Department will issue a certificate for the portion retained by the previous certificate holder for the remainder of the lots and estimated water demand. The Department will not require that a plat be submitted for the portion retained as long as the applicant demonstrates that the plat, as a whole, could be configured without material changes. See final rule R12-15-708(D)(3).

Comment:

Please clarify how plat changes should be reviewed to determine whether they are material when only a subset of the plat is under review. There are various scenarios in which a portion of a plat is subject to review, and the Department should clearly indicate how each



situation will be addressed. (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc; Michael J. Pearce, Fennemore Craig, P.C., on behalf of Home Builders Association of Central Arizona.)

Response:

The Department will revise the rule language to clarify how changes to a portion of a plat will be reviewed. The language from proposed rules R12-15-705(E) and R12-15-706(F) will be moved to proposed rule R12-15-708(D) so that all rule language regarding material plat changes appears in a single rule provision.

Additionally, the language will be revised to clarify the three ways that a portion of a plat may be reviewed. The first two methods are applicable in any situation: the revised portion of the plat may be compared to the equivalent portion of the plat for which the certificate was issued, or the entire revised plat may be compared to the entire plat for which the certificate was issued.

The third situation applies only to partial assignments. In the case of a partial assignment, the Department will presume that changes are not material for the portion of the plat being assigned, as long as it is feasible to reconfigure the remainder of the plat without a material plat change. While the Department may request that the applicant submit information to demonstrate that the plat can be configured without a material plat change, this will usually

be satisfied with a written explanation or diagram. The Department will only require that the applicant submit a plat for the portion retained if the applicant cannot demonstrate that the changes are not material without a revised plat for the entire subdivision.

Comment:

The preamble discussion of proposed rule R12-15-708 discusses the applicability of a certificate or water report to a revised plat. If the Department takes an action or makes a determination that a certificate or water report is not applicable to a revised plat, does that constitute an appealable agency action, governed by A.R.S. Title 41, Chapter 6, including requirements for written notice and a hearing? (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc.)

Response:

Yes, a determination by the Department that a certificate or water report is not applicable to a revised plat due to material plat changes constitutes an appealable agency action and is subject to the provisions of A.R.S. Title 41, Chapter 6. Please note, however, that the provisions in proposed rule R12-15-708 are intended to serve as guidance to developers, platting authorities, the Arizona Department of Real Estate and any other person who may have an interest in whether changes to a plat are material. Although the rule provides for the Department to make such a determination at the request of an applicant, in most cases any

person could make an informal determination as to whether the revised plat includes a material plat change.

Comment:

Proposed rule R12-15-710(A)(5) should reference subsection (E) rather than subsection (C).  
(Arizona Municipal Water Users Association.)

Response:

The Department agrees and will make this typographical correction.

Comment:

Proposed rule R12-15-711(C) (and the corresponding language in proposed rule R12-15-715) should be revised to require that a review for a modification or revocation action initiated by the director will be subject to the standards in place at the time of application, while a modification initiated by the designated provider will be subject to the standards in place at the time of review. (Arizona Municipal Water Users Association.)

Response:

The Department disagrees that the designation should be controlled by the standards in place

when the application was submitted. The review of a designation has always been subject to the standards in place at the time of the review. Designated providers are expected to continue to comply with the rules throughout the term of the designation, including any amendments to the rules. If the Department were making substantive changes to the rules that would negatively affect designated providers, the Department would address that potential effect in the rule change itself. In this rule package, designated providers will not be negatively impacted by these rule changes, which simply streamline the application process. Again, if there are unintended negative consequences for designated providers (or any stakeholder), the Department will take corrective action.

Comment:

Proposed rule R12-15-711(F)(1) should reference subsection (E) of R12-15-710, rather than subsection (C). (Arizona Municipal Water Users Association.)

Response:

The Department agrees and will make this typographical correction.

Comment:

Proposed rule R12-15-711(F)(3) (and the corresponding language in proposed rule R12-15-715) provides for revocation of a designation if "ADEQ notifies the director that the

designated provider is in significant noncompliance and the reason for the noncompliance has not been resolved." The language may negatively impact designated providers in significant noncompliance with non-water regulations or that have a legitimate dispute with ADEQ regarding the reason for or appropriate resolution of the noncompliance. Also, the reference to ADEQ should include "another governmental entity with equivalent jurisdiction." Corresponding changes should be made in proposed rules R12-15-715 and R12-15-719. (Arizona Municipal Water Users Association.)

Response:

The Department agrees. The Department will make changes to clarify that the reference to ADEQ also includes other governmental entities with the same jurisdiction, and that the "significant noncompliance" refers to noncompliance with A.A.C. Title 18, Chapter 4 (ADEQ's regulations governing water quality). The rule is intended to allow the Department to defer to ADEQ on issues of water quality to increase efficiency. The Department will add language to clarify that the determination of significant noncompliance must be a final administrative action, after notice and an opportunity for a hearing. Also, the Department will add language to clarify that if ADEQ has determined that the provider is taking action to resolve the noncompliance, then the Director will determine that the water supply is of adequate quality. The language will be modified in the relevant portions of R12-15-711, R12-15-715 and R12-15-719.

Comment:

Proposed rule R12-15-713(E)(5) adds a new financial capability requirement for water reports. The Department does not have the authority to require evidence of financial capability for water reports, particularly given the Department's previous interpretation that evidence of financial capability is not required. (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc.)

Response:

Although the current rules do not require evidence of financial capability for issuance of a water report, the failure to construct the necessary facilities could effectively make an "adequate" water supply "inadequate." A water supply could only be "adequate" if the necessary delivery, treatment and storage facilities will be in place in a timely manner to serve the water to the subdivision. Cf. A.R.S. § 45-576(I)(3) (defining "assured water supply" to include demonstration of financial capability). Developing those facilities may require significant capital investment, and the proposed rules are intended to ensure that the financial capability will be there to provide the water to the subdivision. The fact that the current rules partially neglect this aspect of the water supply review does not eliminate the Department's authority to review the element. Please note that financial capability may be demonstrated in most cases if the final plat will be submitted to a "qualified platting authority."

Comment:

Proposed rule R12-15-713(I) provides that the owner of land that is the subject of a water report may request a modification of the water report. If an owner owns only part of the subdivision that is the subject of the water report and requests a modification of the water report, will the modified water report apply to all or part of the subdivision? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC.)

Response:

The modified water report will apply only to the portion of the subdivision that is owned by the applicant. Of course, multiple owners may apply to modify the water report so that the modified water report will apply to the entire subdivision.

Comment:

The proposed rules do not provide for inclusion of potential purchasers or affiliates on a water report. Is a water report affected by a change in ownership of all or part of the subdivision? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC.)

Response:

No, a water report is valid for all subsequent owners. Future owners are not required to obtain a new water report, so it is unnecessary to include potential purchasers or affiliates on a water report.

Comment:

In proposed rule R12-15-716(B)(1)(b), the phrase "on individual lots" should be stricken to conform to the change to the definition of "dry lot development." (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

The Department disagrees. In some cases, distributing water across property lines may be subject to legal restrictions, including regulation by the Arizona Corporation Commission, and the Department does not consider such arrangements to be dry lot developments. Although a dry lot development ultimately may utilize a shared well system, for purposes of determining physical availability of groundwater, the Department assumes that wells will be drilled on individual lots unless there is evidence to the contrary. This provision is intended to clarify that the review of physical availability will incorporate that assumption.

Comment:



Proposed rule R12-15-716(H) should be modified to limit the water quality requirements for effluent to state or federal requirements for the proposed use. (Arizona Municipal Water Users Association.)

Response:

The Department disagrees with the first part of this comment. The current rule language limits the water quality requirements for effluent to "any applicable" requirements. The Department believes that "applicable" requirements would be limited to the requirements applicable to the proposed use. Additionally, given that in some locations the county may regulate water quality, referring to "state and federal" requirements may be too narrow. However, the Department will make the suggested change limiting the water quality requirements to those requirements "for the proposed use of the effluent."

Comment:

Proposed rule R12-15-717(C)(5) should be modified to be consistent with the definition of "drought response plan" in R12-15-701(34). (Arizona Municipal Water Users Association.)

Response:

The Department agrees and will make this conforming correction.

Comment:

In proposed rule R12-15-719, the requirement that water quality sampling and analysis be completed within 60 days of the date of application is too short. In many instances, this will require unnecessary re-sampling and additional analysis with no indication that the water quality may have changed. Where samples are collected during well development, the actual application submittal may occur outside the 60-day time limit. The requirement should extend the time period to 6 months. (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc.)

Response:

The Department disagrees with this comment. The 60-day time limit is current Department policy, based on current ADEQ requirements, and ensures that water quality samples and the resulting analysis are as accurate as possible and represent the current quality of the supply. Note that the rule language provides that the Director shall waive any sample collection and analysis requirements waived by ADEQ.

Comment:

Applicants for certificates or water reports should be allowed to submit construction assurance forms (consistent with current Department practice) to demonstrate financial

capability. The qualified platting authority process may take time to implement after the rules are effective, thus delaying certificate and water report applications. (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc.)

Response:

The construction assurance form is essentially a form signed by the platting authority that states that the platting authority will review financial capability for a particular owner of a particular subdivision. In order to streamline the process, the Department is seeking to eliminate these owner-specific and subdivision-specific forms for each application, and defer to platting authorities with written standards for reviewing financial capability. In order to prevent delay of applications after the new rules are effective, the Department will begin developing a list of qualified platting authorities before the rules are actually effective. The Department is committed to reviewing the policies of as many platting authorities as possible before the rules become effective. Although the Department will continue to add to the list after the effective date of the rules, this "pre-screening" process can help prevent a backlog after the rules become effective. Therefore, no change is necessary in response to this comment.

Comment:

Pursuant to proposed rule R12-15-720(B), will an ordinance or regulation adopted by the

platting authority, development agreements, standards identified on the platting authority's website or a letter from the platting authority describing standards for proof of financial capability be sufficient to classify the platting authority as a qualified platting authority? Will the Department accept or a letter from the platting authority as evidence that the platting authority has established the requisite standards of financial capability? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC; Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

Yes, the Department will accept an ordinance or regulation adopted by the platting authority, standards posted on the platting authority's website, a letter or any other written statement of policy from the platting authority to determine that the platting authority has established standards for proof of financial capability so that the platting authority can be classified as a qualified platting authority. A development agreement provision may be sufficient evidence of the platting authority's standards if the Department can reasonably determine that the requirements of the development agreement apply to any plat review within the platting authority's jurisdiction. The Department will evaluate other evidence on a case-by-case basis.

Comment:

Proposed rule R12-15-720(C)(3) may be interpreted to require the complete construction of

all delivery, treatment and storage facilities within the 5-year period covered by the capital improvement plan. Suggested language to clarify that the construction must commence within the five years, but may continue past that term. Rule language should also clarify that the chief financial officer may certify that finances are available or "appropriate financing mechanisms are in place" to construct the necessary facilities. (Arizona Municipal Water Users Association.)

Response:

The rule currently states that the five-year capital improvement plan must include the construction of adequate delivery, storage and treatment works “in a timely manner.” Thus, the rule currently does not require that construction be complete within five years. The Department will change the language to clarify that the five-year capital improvement plan may provide for construction or commencement of construction as necessary to meet the estimated water demand when needed. The Department will also clarify that financing mechanisms are sufficient to meet the requirement.

Comment:

Can a person or entity pledge extinguishment credits to a designation or certificate after the designation or certificate is issued, in order to increase the volume of groundwater calculated pursuant to proposed rule R12-15-722(A) or to reduce the volume of excess groundwater reported to the CAGRD? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000

West L.L.C. and Douglas Ranch El Dorado, LLC; Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

Yes, extinguishment credits may be pledged to a certificate or designation after issuance. Pledging extinguishment credits may increase the volume of groundwater that may be used consistent with the management goal under proposed rule R12-15-722(A) or reduce the volume of excess groundwater that must be reported to the CAGRD.

Comment:

Proposed rule R12-15-722(A) calculates the volume of groundwater that may be used that is consistent with the management goal. For purposes of the Phoenix, Tucson or Prescott AMAs, can this volume be used in any year? (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

Yes, with respect to the Phoenix, Prescott and Tucson AMAs, the volume of groundwater that may be used that is consistent with the management goal is a "100-year volume." All or a portion of the volume may be used in any year until the volume is used up. In the Pinal AMA, the volume of groundwater is expressed as an annual volume, and becomes available

each year (while the "unused" portion is available in subsequent years), pursuant to subsection (C). Please note that the CAGRDR may have established minimum reporting requirements regarding excess groundwater.

Comment:

Proposed rule R12-15-723(D)(1) adds the restriction that the Department will not issue extinguishment credits for the extinguishment of an irrigation grandfathered right (IGFR) appurtenant to land that is developed for a non-irrigation use. The right should be extinguishable as long as the landowner holds the right. The conversion of irrigation grandfathered rights to Type 1 is statutorily permitted within a reasonable time after retirement occurs. (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

The Department does not agree with this comment. This provision is not a new provision. It is included for purposes of the Prescott AMA in the current rule (A.A.C. R12-15-705(L)(4)(c)), and the Department has historically applied it to the other AMAs. The extinguishment credit provision gives an additional groundwater allowance to a certificate or designation applicant if the applicant extinguishes an existing irrigation grandfathered right (IGFR). The purpose of the provision is to provide an incentive for extinguishing permanent groundwater uses in the AMA. If land to which an IGFR is appurtenant has already been physically developed for a non-irrigation use, it is unlikely that the IGFR will be used for

irrigation in the future, and therefore there is no reason to provide an incentive for the extinguishment of the right.

Comment:

Proposed rule R12-15-723(D)(2) adds the restriction that the Department will not issue extinguishment credits for the extinguishment of a Type 1 right, if the landowner will receive groundwater from an undesignated provider for the same use. There is no legal authorization to treat these Type 1s differently than any other Type 1. (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

The Department does not agree with this comment. Note that this is not a new restriction. This restriction is included in current rule (A.A.C. R12-15-705(P)). The "extinguishment credit" was created by the Department in the Assured Water Supply rules. The Department distinguished between Type 1s for uses that would continue to receive groundwater and Type 1s for uses that would not continue to receive groundwater because the extinguishment credit is given in exchange for the benefit to the aquifer of the reduced groundwater pumping (from eliminating the Type 1 use). Essentially, the extinguishment credit allows the subdivision to replace the previous Type 1 use. If the groundwater will still be withdrawn in the same amount for the same use, then there is no benefit to the aquifer of extinguishing the right and the Department will not issue "credits" for extinguishing the right.



Comment:

Proposed rule R12-15-723(D)(2) provides that extinguishment credits are not available for extinguishment of a Type 1 right "if the Director determines that the holder is likely to continue to receive groundwater from an undesignated municipal provider for the same use pursuant to the provider's service area right or pursuant to a groundwater withdrawal permit." Are extinguishment credits available if an undesignated municipal provider will serve groundwater to the site for a different use? (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC.)

Response:

Yes, the Department will issue extinguishment credits for the extinguishment of a Type 1 right, where an undesignated municipal provider will serve groundwater to the Type 1 holder for a different use. Frequently, a Type 1 right is extinguished, the appurtenant land is subdivided and the individual lots receive groundwater for residential use. The residential use replaces the previous use of the Type 1 right, and often the extinguishment credits are pledged to the subdivision to allow the subdivision to receive groundwater in an amount less than the Type 1 right so that the net effect is a reduction of the impact on the aquifer and a reduction in groundwater mining.

Comment:

Proposed rule R12-15-723(D)(3) adds the restriction that the Department will not issue extinguishment credits for the extinguishment of a Type 2 right that was issued based on the withdrawal of groundwater for mineral extraction or processing or for the generation of electrical energy. The basis for this restriction is unclear. (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

Again, this is included in current rule (A.A.C. R12-15-705(P)). A Type 2 right issued for the extraction or processing of minerals or for the generation of electrical energy may only be used for the purpose for which it was issued. See A.R.S. § 45-471(A). If the use upon which the right was based terminates, then the right could not be used for the withdrawal of groundwater for any other purpose. Therefore, issuing extinguishment credits for the extinguishment of such a right would allow new groundwater mining with no benefit to the aquifer.

Comment:

Suggested various changes throughout proposed rule R12-15-729 to make the rule internally consistent (i.e., consistently use "remedial groundwater" rather than "groundwater"). (Arizona Municipal Water Users Association.)

Response:

The Department will make these non-substantive changes to make the rule language consistent.

Comment:

The fee for an analysis is currently \$1000 and under the proposed rule will increase to \$7500. The fee is too high and would not be economically viable for applicants. The fee should be calculated using a method similar to that for certificates, using a base fee and adding additional fees on a per lot basis. (Greg Wallace, Errol Montgomery and Associates, on behalf of various clients.)

Response:

The Department does not agree with this comment. The analysis is one of the most complicated applications because it involves extensive review of the availability of supplies, with less information about specific demands. Additionally, the number of lots in an analysis does not affect the nature of the review, so the per lot fee basis is not an appropriate way to allocate fees. The analysis is a planning tool designed for large master planned communities, so that the developer can rely on the availability of water supplies throughout the extended duration of development. Given the average number of lots in an analysis (9,049 lots), however, the per lot fee of \$7500 averages out to \$0.80 per lot, which is a reasonable fee for

the nature of the service.

Comment:

The revised rules include an increase in fees, which will generate revenue for the Department in order to administer the program. The implementation of the rules themselves should streamline the process, cut administrative costs and, in conjunction with the increased revenue from the fees, expedite application processing and improve the program. (Michael J. Pearce, Fennemore Craig, P.C., on behalf of Home Builders Association of Central Arizona.)

Response:

The Department agrees. Furthermore, the Department is committed to ongoing discussions with stakeholders regarding the implementation of the rules and the efficiency and effectiveness of the program as a whole.

Comment:

Include language in rule "explaining that the review and revocation of existing assured and adequate water supply determinations and orders will not be affected by these rules." (Arizona Municipal Water Users Association.)

Response:

The Department has adequately addressed this issue in the preamble of the rule. For purposes of revocation or review, a certificate or water report will be subject to the rules in effect when the certificate or water report was issued. For purposes of material plat change review, assignment or reissuance, a certificate or water report will be subject to the revised rules. Designations will be subject to the rules in effect at the time of review. However, these rule changes will not adversely affect the review of a designated provider's status. No changes to the rules are necessary in response to this comment.

Comment:

Include language to clarify that numbering changes will not affect existing designation orders. (Arizona Municipal Water Users Association.)

Response:

The Department agrees that changes to rule numbers will not affect existing determinations. Even if the Department sought to revoke a designation of assured or adequate water supply on that basis, the Department must demonstrate at a hearing that the provider does not meet the requirements; showing that the numbers have changed would be insufficient to revoke. The Department will add the language.

Comment:

The Department should address the issue of groundwater withdrawal rights and consistency with management goal requirements. (Michael J. Pearce, Fennemore Craig, P.C., on behalf of Home Builders Association of Central Arizona.)

Response:

The Department has committed to address this issue through continuing discussions with stakeholders in the near future. However, no changes have been made to the rules in response to this comment.

Comment:

The Department should assure the stakeholders that the Department will correct any unintended consequences. (City of Tucson.)

Response:

The Department recognizes that several of the changes may or may not produce their intended effects, and that only in their implementation will we see the true impact of the rule changes. The Department remains committed to revising the rules as necessary to maintain an efficient and functional program that serves its statutory purposes. To that end, the Department will be willing to revise the rules in the future as necessary to address any

unintended consequences.

Comment:

The Department should consider and address the fundamental differences in the rules for certificates and designations in future rulemaking processes. (City of Tucson.)

Response:

Certificates and designations are different determinations and both have advantages and disadvantages. The Department is willing to consider specific issues raised by stakeholders in future discussions.

Comment:

Various typographical corrections and changes to ensure internal consistency were suggested. (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West L.L.C. and Douglas Ranch El Dorado, LLC; Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

The Department will make these typographical and consistency changes.

Comment:

Will determinations of assured water supply and determinations of adequate water supply issued prior to February 7, 1995, be subject to the standards in effect at the time the determination was issued? Will determinations issued after February 7, 1995, and before the effective date of the proposed rules be subject to the current rules? (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc.)

Response:

Designations have always been subject to the rules in effect at the time, with an ongoing obligation to comply with rule changes. (A.A.C. R12-15-709(B).) As previously discussed, the rule changes in question will not negatively impact designated providers, nor will these revisions subject designated providers to a new standard of review. All other determinations will be subject to the standards in effect at the time the determination was issued. For example, a certificate issued in 1993 will be subject to the standards in effect in 1993. A certificate issued in 1997 will be subject to the standards in effect in 1997.

**12. Any other matters prescribed by statute that are applicable to the specific agency or any other specific rule or class of rules:**

None



**13. Incorporations by reference and their location in the rules:**

None

**14. Whether the rules were previously made as emergency rules and, if so, whether the text was changed between the making as an emergency and the making of the final rules:**

This rulemaking incorporates the substance of the emergency rules, previously included in A.A.C. R12-15-701(10), R12-15-703(B)(1)(d)(iii) and R12-15-717(B)(1)(d)(iii). See 11 A.A.R. 2706, July 22, 2005; 12 A.A.R. 144, January 13, 2006. The provisions are incorporated into this rulemaking as proposed R12-15-716(B)(3)(c).

**15. The full text of the rules follows:**

## TITLE 12. NATURAL RESOURCES

### CHAPTER 15. DEPARTMENT OF WATER RESOURCES

#### ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

##### Section

R12-15-701. Definitions - Assured and Adequate Water Supply Programs

R12-15-702. ~~Assured Water Supply Requirement—Application for Certificate of Assured Water Supply; Application for Designation of Assured Water Supply; Application for Analysis of Assured Water Supply~~ Physical Availability Determination

R12-15-703. ~~Assured Water Supply Requirement—Physical Availability; Continuous Availability; Legal Availability~~ Analysis of Assured Water Supply

R12-15-703.01. ~~Assured Water Supply Requirement—Legal Availability of Central Arizona Project Water or Colorado River Water Leased from an Indian Community~~  
Repealed

R12-15-704. ~~Assured Water Supply Requirement—Water Quality~~ Certificate of Assured Water Supply

R12-15-705. ~~Assured Water Supply Requirement—Consistency with Management Goal~~  
Assignment of Type A Certificate of Assured Water Supply

R12-15-706. ~~Assured Water Supply Requirement—Consistency with Management Plan~~  
Assignment of Type B Certificate of Assured Water Supply

R12-15-707. ~~Assured Water Supply Requirement—Financial Capability~~ Application for Classification of a Type A Certificate

- R12-15-708. ~~Assured Water Supply Requirement—Ownership Interest; Change in Ownership~~  
Material Plat Change; Application for Review
- R12-15-709. ~~Assured Water Supply Requirement—Review; Modification; Revocation;~~  
~~Prohibition on Transfer of Groundwater Allocation~~ Certificate of Assured Water  
Supply; Revocation
- R12-15-710. ~~Assured Water Supply Requirement—Notice; Objection; Hearing; Issuance of~~  
~~Designation of Assured Water Supply; Revocation of Certificate or Designation of~~  
~~Assured Water Supply; Review~~ Designation of Assured Water Supply
- R12-15-711. ~~Assured Water Supply Requirement—Annual Reports~~ Designation of Assured  
Water Supply; Annual Report Requirements, Review, Modification, Revocation
- R12-15-712. ~~Assured Water Supply Requirement—Unplatted Development Plan; Analysis of~~  
~~Assured Water Supply~~ Analysis of Adequate Water Supply
- R12-15-713. ~~Assured and Water Supply Requirement—State Land Department/General Plan,~~  
~~Development Plan, Secondary Plan~~ Water Report
- R12-15-714. ~~Assured Water Supply Requirement—Fees~~ Designation of Adequate Water Supply
- R12-15-715. ~~Definitions—Adequate Water Supply Program~~ Designation of Adequate Water  
Supply; Annual Report Requirements, Review, Modification, Revocation
- R12-15-716. ~~Adequate Water Supply Requirement—Application for Water Report; Application~~  
~~for Designation of Adequate Water Supply; Application for Analysis of Adequate~~  
~~Water Supply~~ Physical Availability
- R12-15-717. ~~Adequate Water Supply Requirement—Physical Availability~~ Continuous  
Availability
- R12-15-718. ~~Adequate Water Supply Requirement—Water Quality~~ Legal Availability

- R12-15-719. Adequate Water Supply Requirement—Ownership Interest Water Quality
- R12-15-720. Adequate Water Supply Requirement—Review; Modification; Revocation Financial Capability
- R12-15-721. Adequate Water Supply Requirement—Notice; Objection; Hearing; Issuance of Designation of Adequate Water Supply; Revocation of Designation of Adequate Water Supply; Review Consistency with Management Plan
- R12-15-722. Adequate Water Supply Requirement—Annual Reports Consistency with Management Goal
- R12-15-723. Adequate Water Supply Requirement—Master Plan Communities and Unplatted Development Plans; Analysis of Adequate Water Supply Extinguishment Credits
- R12-15-724. Adequate Water Supply Requirement—State Land Department/General Plan, Development Plan, Secondary Plan Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits
- R12-15-725. Adequate Water Supply Requirements—Fees Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits
- R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits
- R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits
- R12-15-728. Reserved
- R12-15-729. Remedial Groundwater; Consistency with Management Goal
- R12-15-730. Assured and Adequate Water Supply Fees

## **ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

### **R12-15-701. Definitions - Assured and Adequate Water Supply Programs**

In addition to the any other definitions set forth in A.R.S. §§ 32-2101, 45-101, 45-402, 45-561, 45-576, 45-651, 45-802, 45-851, and 45-1901 Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. ~~“AAWS applicant” means an applicant for an analysis of assured water supply, or the applicant’s proposed municipal provider.~~ “Abandoned plat” means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
  - a. The land has been developed for another use; or
  - b. Legal restrictions will preclude approval of the plat.
2. ~~“Active management area water district” means a district formed pursuant to A.R.S. Title 48, Chapter 28.~~ “ADEQ” means the Arizona Department of Environmental Quality.
3. ~~“Analysis of assured water supply” means an instrument prepared by the director in accordance with R12-15-712.~~ “Adequate delivery, storage, and treatment works” means:
  - a. A water delivery system with sufficient capacity to deliver enough water to meet the needs of the proposed use;
  - b. Any necessary storage facilities with sufficient capacity to store enough water to meet the needs of the proposed use; and
  - c. Any necessary treatment facilities with sufficient capacity to treat enough water to meet the needs of the proposed use.
4. “Adequate storage facilities” means facilities that can store enough water to meet the needs of the proposed use.

5. “Affiliate” means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
6. ~~“Certificate applicant” means a person who is applying for a certificate of assured water supply, or the applicant’s proposed municipal provider.~~ “AMA” means an active management area as defined in A.R.S. § 45-402.
7. ~~“Certificate of assured water supply” means a permit issued by the director for a development, other than a master planned community, after the director determines that an assured water supply exists for the development pursuant to A.R.S. § 45-576 and this Article.~~ “Analysis” means an analysis of assured water supply or an analysis of adequate water supply.
8. “Analysis holder” means a person to whom an analysis of assured water supply or an analysis of adequate water supply is issued and any current owner of land included in the analysis.
9. “Analysis of adequate water supply” means a determination issued by the Director stating that one or more criteria required for a water report pursuant to R12-15-713 have been demonstrated for a development.
10. “Analysis of assured water supply” means a determination issued by the Director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-704 have been demonstrated for a development.
11. “Annual authorized volume” means, for an approved remedial action project, the annual authorized volume specified in a consent decree or other document approved by ADEQ or the EPA, except that:

- a. If no annual authorized amount is specified in a consent decree or other document approved by ADEQ or the EPA, the annual authorized volume is the largest volume of groundwater withdrawn pursuant to the approved remedial action project in any year prior to January 1, 1999.
- b. If the Director increases the annual authorized volume pursuant to R12-15-729(C), the annual authorized volume is the amount approved by the Director.
12. ~~“Date of application” means the date the director receives an application for a certificate of assured water supply, designation of assured water supply, or an analysis of assured water supply.~~ “Annual estimated water demand” means the estimated water demand divided by 100.
13. ~~“Declaration date” means the date the director enters a final decision and order declaring that the Prescott Active Management Area is no longer at safe yield.~~ Approved remedial action project” means a remedial action project approved by ADEQ under A.R.S. Title 49, or by the EPA under CERCLA.
14. ~~“Declaration year” means the calendar year in which the director enters a final decision and order declaring that the Prescott Active Management Area is no longer at safe yield.~~ “Authorized remedial groundwater use” means, for any year, the amount of remedial groundwater withdrawn pursuant to an approved remedial action project and used by a municipal provider during the year, not to exceed the annual authorized volume of the project.
15. ~~“Deemed provider” means a city or town designated under A.R.S. § 45-576(E) which has received an allocation from the United States Secretary of the Interior for Central Arizona Project water.~~

4.15. “Build-out” means a condition in which all water delivery mains are in place and active water service connections exist for all lots.

5.16. “Central Arizona Project CAP water” means:

- a. All water from the Colorado River or from the Central Arizona Project works authorized in P.L. 90-537, excluding enlarged Roosevelt reservoir, which is made available pursuant to a subcontract with a multi-county water conservation district.
- b. Any additional water not included in subsection 516(a) of this Section that is delivered by the United States Secretary of the Interior pursuant to an Indian water rights settlement through the Central Arizona Project.

17. ~~“Designated provider” means within an active management area, a municipal provider which has obtained a designation of assured water supply or a city or town which is a deemed provider.~~ “Central Arizona Groundwater Replenishment District” or “CAGRD” means a multi-county water conservation district acting in its capacity as the entity established pursuant to A.R.S. § 48-3771, et seq., and responsible for replenishing excess groundwater

18. ~~“Designation of AWS applicant” means a person applying for a designation of assured water supply.~~ “Central distribution system” means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.

19. “CERCLA” or “Comprehensive Environmental Response, Compensation, and Liability Act of 1980” has the same meaning as prescribed in A.R.S. § 49-201.

20. “Certificate” means a certificate of assured water supply issued by the Director for a subdivision pursuant to A.R.S. § 45-576 et seq. and this Article.

21. “Certificate holder” means any person included on a certificate, except the following:



a. Any person who no longer owns any portion of the property included in the certificate, and

b. Any potential purchaser for whom the purchase contract has been terminated or has expired.

8.22. “Certificate of convenience and necessity” means a certificate required by the Arizona Corporation Commission, pursuant to A.R.S. § 40-281, which allows a private water company to serve water to customers within its certificated area.

9.23. “Colorado River water” means ~~any surface water diverted from the main stem stream of the Colorado River, except Central Arizona Project water, which is obtained through a contract with the United States Secretary of the Interior.~~ For purposes of this Article, Colorado River water does not include CAP water.

10.24. “Committed demand” means the ~~estimated~~ 100 year water demand at build-out of all recorded lots ~~within the boundaries of the area being evaluated for physical availability which that~~ are not yet served water within the service area of a designation applicant or a designated provider.

11.25. “County water augmentation authority” means an authority formed pursuant to A.R.S. Title 45, Chapter 11, ~~Arizona Revised Statutes.~~

26. “Current demand” means the 100-year water demand for existing uses within the service area of a designation applicant or designated provider, based on the annual report for the previous calendar year.

27. ~~“Groundwater replenishment district” means a district established pursuant to A.R.S. Title 48, Chapter 27.~~

16.27. “Depth-to-static water level” means the level at which water stands in a well when no

water is withdrawn by pumping or by free flow.

~~28. “Lost and unaccounted for water” means water which is defined as lost and unaccounted for water in the management plans for the second management period, 1990-2000.~~

“Designated provider” means

a. A municipal provider that has obtained a designation of assured or adequate water supply; or

b. A city or town that has obtained a designation of adequate water supply pursuant to A.R.S. § 45-108(D).

~~19.29. “Designation of assured water supply” means a decision and order issued by the director designating a municipal provider as having an assured water supply pursuant to A.R.S. § 45-576 and this Article~~ or an adequate water supply.

30. “Determination of adequate water supply” means a water report, a designation of adequate water supply, or an analysis of adequate water supply.

31. “Determination of assured water supply” means a certificate, a designation of assured water supply, or an analysis of assured water supply.

~~20.32.~~ “Development” means either a subdivision or an unplatted development plan.

~~33. “Multifamily housing unit” means a mobile home in a mobile home park and any permanent housing unit having one or more common walls with another housing unit located in a multifamily residential structure and includes a unit in a duplex, triplex, fourplex, condominium development, townhome development, or apartment complex.~~

“Diversion works” means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.

~~21.34.~~ “Drought response plan” means a plan describing a variety of conservation and

augmentation measures, especially the use of backup water supplies, ~~which~~ that a municipal provider will utilize in operating its water supply system in times of a water supply shortage. The plan may include the following:

- a. An identification of priority water uses consistent with ~~appropriate~~ applicable public policies.
- b. A description of sources of emergency water supplies.
- c. An analysis of the potential use of water pressure reduction.
- d. Plans for public education and voluntary water use reduction.
- e. Plans for water use bans, restrictions, and rationing.
- f. Plans for water pricing and penalties for excess water use.
- g. Plans for coordination with other cities, towns, and private water companies.

~~35. “New large cooling user” means a user which is defined as a new large cooling user in the management plans for the second management period, 1990-2000.~~

~~22.35. “Drought volume” means 80% of the volume of a surface water supply, determined by the director under R12-15-703~~ R12-15-716 ~~to be physically available on an annual basis to a holder of a certificate~~ holder ~~of assured water supply or a designated provider designation of assured water supply.~~

~~36. “Non-residential use” means a water use which is defined as a non-residential use in the management plans for the second management period, 1990-2000.~~

~~23.36. “Dry lot~~Dry lot ~~development” means a development~~ or subdivision ~~without a central water distribution system for the distribution of water.~~

37. “EPA” means the United States Environmental Protection Agency.

38. “Estimated water demand” means:

- a. For a certificate or water report, the Director's determination of the 100-year water demand for all uses included in the subdivision;
- b. For a designation, the sum of the following:
  - i. The Director's determination of the current demand;
  - ii. The Director's determination of the committed demand; and
  - iii. The Director's determination of the projected demand during the term of the designation; or
- c. For an analysis, the Director's determination of the water demand for all uses included in the development.

~~24.39.~~ "Existing municipal provider" means a municipal provider that was in operation and serving water for non-irrigation use on or before January 1, 1990.

~~25.40.~~ "Extinguish" means to cause a grandfathered right to cease to exist through a process established by the director pursuant to ~~R12-15-705~~ R12-15-723.

41. "Extinguishment credit" means a credit that is issued by the Director in exchange for the extinguishment of a grandfathered right and that may be used to make groundwater use consistent with the management goal of an AMA.

~~42. "Preliminary certificate of assured water supply" means an instrument issued by the director upon a finding that an applicant for a certificate of assured water supply has satisfied all assured water supply requirements in this Article except for those established in R12-15-707.~~

~~26.42.~~ "Firm yield" means the minimum annual diversion for the period of record which may include runoff releases from storage reservoirs, and surface water withdrawn from a well.

~~43. "Service area population" means the population defined as service area population in the~~

~~management plans for the second management period, 1990-2000.~~

~~29.~~43. “Management plan” means a water management plan adopted by the director pursuant to A.R.S. § 45-561 et seq.

~~44. “Single family housing unit” means a detached dwelling, including mobile homes not in mobile home parks. “Master-planned community” has the same meaning as provided in A.R.S. § 32-2101.~~

~~45. “Stored credits” means incidental recharge credits, extinguishment credits, and groundwater storage project credits which the director has included in the physical availability account established under R12-15-703.~~

~~30.~~45. “Median flow” means the flow which is represented by the middle value of a set of flow data ~~which~~ that are ranked in order of magnitude.

~~46. “Member land” has the same meaning as provided in A.R.S. § 48-3701.~~

~~47. “Member service area” has the same meaning as provided in A.R.S. § 48-3701.~~

~~48. “Turf related Facility” means a facility which is defined as a turf related facility in the management plans for the second management period, 1990-2000.~~

~~31.~~48. “Multi-county water conservation district” means a district established pursuant to A.R.S. Title 48, Chapter 22.

~~49. “Unplatted development plan” means an unplatted land use plan for development which, if platted, would be subject to the requirements of this Article.~~

~~32.~~49. “Municipal provider” means a city, town, or private water company has the same meaning as provided in A.R.S. § 45-561.

~~50. “Water supply plan” means a water supply plan containing all of the following information:~~

- ~~a. A description of facilities and water using features associated with the residential and non-residential portion of the development.~~
- ~~b. A description of the applicant's current and proposed water conservation programs.~~
- ~~c. A list of current and proposed conservation oriented ordinances adopted or under consideration by the local governing body.~~
- ~~d. A description of conservation practices, rates, fees, restrictions, policies, and devices to be utilized within the development, or utilized within the municipal provider's service area to meet the applicant's or the applicant's municipal provider's conservation requirements established in the management plan in effect on the date of application.~~
- ~~e. Plans for augmentation of the water supplies, including the development or acquisition of renewable supplies.~~

~~34.50.~~ "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.

~~37.51.~~ "Owner" means:

- ~~a. With respect to a certificate applicant, a person who holds a sufficient ownership interest in the land described in the certificate application to allow for the sale or lease of the property immediately upon approval of the certificate and plat, and the issuance of the public report; For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or~~
- ~~b. With respect to For a designation applicant, the person who will be providing water service pursuant to the designation.~~

~~38.52.~~ "Perennial" means a stream that flows continuously.

39.53. “Persons per household” means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.

40.54. “Physical availability ~~demonstration~~determination” means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C)a process whereby a municipal provider not presently applying for a designation of assured water supply or a developer not presently applying for a certificate of assured water supply can submit evidence to the director indicating the physical availability as determined under R12-15-703(B) and quality of water sources under R12-15-704 identified by the provider or developer.

41.55. “Plat” means a preliminary or final map of lots and land uses ~~which requires evidence of an assured water supply prior to approval by a city, town, or county~~ a subdivision in a format typically acceptable to a platting entity.

56. “Potential purchaser” means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.

57. “Projected demand” means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider’s service area and reasonably anticipated expansions of the designated provider’s service area.

58. “Proposed municipal provider” means a municipal provider that has agreed to serve a proposed subdivision.

59. “Purchase agreement” means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or a subdivision trust agreement.

60. “Remedial groundwater” means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.

61. “Service area” means

- a. For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider’s operating distribution system for the delivery of water for a non-irrigation use;
- b. For an application for a designation of adequate water supply pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider’s operating distribution system for the delivery of water for a non-irrigation use; or
- c. For an application for a certificate or designation of assured water supply, “service area” has the same meaning as prescribed in A.R.S. § 45-402.

62. “Subdivision” has the same meaning as prescribed in A.R.S. § 32-2101.

~~46-63.~~ “Superfund site” means the site of a remedial action undertaken pursuant to CERCLA ~~the Comprehensive Response, Compensation, and Liability Act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 U.S.C. §§ 9601-9657).~~

~~47-64.~~ “Surface water” means any surface water as defined in A.R.S. § 45-101, including ~~Central Arizona Project~~ CAP water and Colorado River water.

~~51-65.~~ “Water Quality Assurance Revolving Fund site” or “WQARF site” means a site of a



remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.

66. “Water report” means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists pursuant to A.R.S. § 45-108 and this Article.

**~~R12-15-702. Assured Water Supply Requirement -- Application for Certificate of Assured Water Supply; Application for Designation of Assured Water Supply; Application for Analysis of Assured Water Supply Physical Availability Determination~~**

~~A. A person applying for a certificate of assured water supply, a designation of assured water supply, or an analysis of assured water supply shall provide the following information on a form prescribed by the director:~~

~~1. For an application for a certificate of assured water supply or an analysis of assured water supply:~~

~~a. Name, telephone number, and address of the certificate applicant or AAWS applicant.~~

~~The applicant must be the owner of the subdivision for which the application is filed.~~

~~If the holder of an ownership interest in the proposed development is a person other than an individual, such as a corporation, partnership, or trust, a statement naming the type of legal entity and listing the interest and extent of such interest of each principal in the entity. For purposes of this subsection (a), “principal” means any person or entity having a ten percent or more financial interest in the development or, if the legal entity is a trust, each beneficiary of the trust holding a ten percent or more beneficial interest in the development.~~

~~b. Name of the proposed development.~~

- ~~c. Name, address, and telephone number of the municipal provider proposed to serve the development and the applicant's technical consultant.~~
- ~~d. Number of lots and housing units projected to be located within the proposed development.~~
- ~~e. A copy of the proposed development's plat which will be submitted to the city, town, or county for approval or unplatted development plan and a map of the proposed development which indicates the location of the proposed water distribution system and treatment works and the proposed development's geographical coordinates.~~
- ~~f. Total acreage of and size of lots in the proposed development.~~
- ~~g. The anticipated schedule for the proposed development to reach build out and an annual projection of water demand until build out.~~
- ~~h. Proposed water uses of the proposed development.~~
- ~~i. Projected annual water demand per lot or housing unit within the proposed development at build out for the following categories, and a schedule for completion of facilities associated with each category:
  - ~~i. Single family housing units;~~
  - ~~ii. Multifamily housing units;~~
  - ~~iii. Non-residential uses, excluding turf-related facilities and new large cooling users;~~
  - ~~iv. Turf-related facilities;~~
  - ~~v. New large cooling users; and~~
  - ~~vi. Other uses which impact the projected annual water demand.~~~~
- ~~j. A water supply plan.~~
- ~~k. Information required to project annual lost and unaccounted for water associated with~~

- ~~the proposed development.~~
- ~~l. A description of the landscaping to be planted in public rights of way associated with the proposed development.~~
  - ~~m. Projected average number of persons per household for the proposed development for the following categories:~~
    - ~~i. Single family housing units,~~
    - ~~ii. Multifamily housing units.~~
  - ~~n. Method of distributing water to the proposed development.~~
  - ~~o. A study indicating that the certificate applicant's or AAWS applicant's proposed sources of water meet the requirements established in R12-15-703 and R12-15-704. If wells proposed to provide water to the development are located within one mile of a Water Quality Assurance Revolving Fund or Superfund site, or if the water supply does not currently satisfy state aquifer water quality standards, the study shall include:~~
    - ~~i. An identification of groundwater, if any, that does not meet state aquifer water quality standards within or adjacent to the wells proposed to provide water to the development.~~
    - ~~ii. An analysis of the possible migration of groundwater that does not meet state aquifer water quality standards which may result from the proposed use.~~
  - ~~p. A copy of a notice of intent to serve agreement entered into between the owner of the proposed development and a municipal provider which is proposed to serve the proposed development.~~
  - ~~q. A copy of any agreement for the delivery of specific sources of water to the proposed~~

- development.
- ~~r. A copy of any water service agreement between the certificate applicant or the AAWS applicant and an active management area water district, or county water augmentation authority, or a subcontract with a multi county water conservation district.~~
  - ~~s. Evidence, consistent with the requirements established in R12-15-703, of any legal right to use the proposed sources of water for the proposed development.~~
  - ~~t. If the municipal provider proposed to serve the proposed development is a private water company, evidence of the proposed municipal provider's certificate of convenience and necessity as approved by the Arizona Corporation Commission.~~
  - ~~u. Evidence of financial capability to construct the delivery system and any necessary treatment works and storage facilities for the proposed development consistent with the requirements of R12-15-707.~~
  - ~~v. A drought response plan, if required under R12-15-703.~~
  - ~~w. If the applicant qualifies as a member land of a multi county water conservation district as provided in A.R.S. Title 48, Chapter 22, or a water district member land of an active management area water district as provided in A.R.S. Title 48, Chapter 28, Arizona Revised Statutes, evidence of such membership.~~
- ~~2. For an application for a designation of assured water supply, as applicable:~~
- ~~a. Name of the designation of AWS applicant. The AWS applicant must be the owner of the municipal provider. If the holder of any ownership interest in the applicant is a person other than an individual, city, or town such as a corporation, partnership, or trust, a statement naming the type of legal entity and listing the interest and the extent~~

- of such interest of each principal in the entity.
- b. ~~Address and telephone number of the designation of AWS applicant and contact person.~~
  - c. ~~A copy of the designation of AWS applicant's current service area map which includes the designation of AWS applicant's current and proposed distribution system, treatment works, and storage facilities to be analyzed by the director in determining continuous availability under R12-15-703(C), and the designation of AWS applicant's geographical coordinates.~~
  - d. ~~The designation of AWS applicant's annual population projection for each calendar year for 20 calendar years from the date of application.~~
  - e. ~~An analysis of current and committed demands for the designation of AWS applicant.~~
  - f. ~~Projected water demands of the residential and non-residential use categories specified by the director which are necessary to make the determination required in R12-15-706.~~
  - g. ~~A water supply plan.~~
  - h. ~~Information required to project annual lost and unaccounted for water associated with the activities of the designation of AWS applicant.~~
  - i. ~~Projected average number of persons per household for housing units being served and proposed to be served by the designation of AWS applicant for the following categories:~~
    - i. ~~Single family housing units,~~
    - ii. ~~Multifamily housing units.~~
  - j. ~~A study indicating that the designation of AWS applicant's proposed sources of water~~

- ~~meet the requirements established in R12-15-703 and R12-15-704. If wells proposed to serve the designation of AWS applicant's service area are located within one mile of a Water Quality Assurance Revolving Fund or Superfund site, or if the water supply does not currently satisfy state aquifer water quality standards, the study shall include:~~
- ~~i. An identification of groundwater, if any, that does not meet state aquifer water quality standards within or adjacent to the wells proposed to serve the service area.~~
  - ~~ii. An analysis of the possible migration of groundwater that does not meet state aquifer water quality standards which may result from the proposed use.~~
  - ~~k. Evidence, consistent with the requirements established in R12-15-703, of the designation of AWS applicant's legal right to use the proposed sources of water.~~
  - ~~l. A copy of any water service agreement between the applicant and an active management area water district or a county water augmentation authority, or a subcontract with a multi-county water conservation district.~~
  - ~~m. If the designation of AWS applicant is a private water company, evidence of the applicant's certificate of convenience and necessity approved by the Arizona Corporation Commission.~~
  - ~~n. Evidence of financial capability to construct the delivery system and any necessary treatment works and storage facilities for the designation of AWS applicant consistent with the requirements of R12-15-707.~~
  - ~~o. A drought response plan, if required under R12-15-703.~~
  - ~~p. If the applicant qualifies as a member service area of a multi-county water~~

- ~~conservation district as provided in A.R.S. Title 48, Chapter 22, a district member of a groundwater replenishment district as provided in A.R.S. Title 48, Chapter 27, or a water district member service area of an active management area water district as provided in A.R.S. Title 48, Chapter 28, evidence of such membership.~~
- ~~3. Any other information prescribed by the director which is necessary to make a determination of whether an assured water supply exists for the applicant.~~
  - ~~4. A sworn statement avowing that the information contained in the application is true and correct to the best knowledge of the certificate applicant, designation of AWS applicant, or AAWS applicant.~~
- ~~B.~~** ~~An application for a certificate of assured water supply, a designation of assured water supply, or an analysis of assured water supply shall be signed by:~~
- ~~1. The individual owner if the proposed development or private water company is owned by a sole proprietor; or~~
  - ~~2. An authorized corporate officer, partner, or trustee if the proposed development or private water company is owned by a corporation, partnership, or trust. If the application is submitted on behalf of a corporation, a resolution enacted by the corporation which evidences that the person signing the application is so authorized by the corporation; or~~
  - ~~3. A city or town manager or a person employed in an equivalent position if the applicant is a city or town. The application shall also include a resolution of the governing body of the city or town authorizing the city or town manager to sign the application.~~
- ~~C.~~** ~~A person applying for a physical availability demonstration shall submit evidence as prescribed in subsection (A) of this Section which is required by the director to determine physical availability under R12-15-703(B) and quality of the proposed source of water under~~

~~R12-15-704. After analyzing this information, the director shall provide the applicant a written determination of the proposed source of water's physical availability and quality. The demonstration may be used by any person as evidence of the physical availability and quality of those water sources described in the demonstration.~~

~~D. A municipal provider, other than a deemed provider, which is designated as having an assured water supply as of the effective date of this Article shall file an application to continue its designation of assured water supply within 180 days after the effective date of this Article or the director shall revoke the municipal provider's designation of assured water supply. If the municipal provider files an application within 180 days after the effective date of this Article, and the director determines that the information is insufficient to determine whether an assured water supply exists, the municipal provider shall have 60 days from the date of notification that the application is incomplete to complete its application. If the municipal provider fails to complete its application within 60 days after receiving the notice, the director may revoke the municipal provider's designation of assured water supply.~~

~~E. If a municipal provider is a deemed provider as of the effective date of this Article, the municipal provider's designated status shall terminate on January 1, 1998, unless the municipal provider files an application to continue its designated status on or before January 1, 1998, and the director determines the application to be complete and correct, in which case the provider's original designation shall remain effective until the director determines whether to redesignate the provider. A deemed provider which successfully applies for redesignation under this Article shall not be subject to the requirements established in this Article until January 1, 1998.~~

~~F. If a designated provider's designated status terminates, the provider may apply to be~~



~~designated anytime thereafter.~~

~~G. Subject to the provisions of subsection (H) of this Section, the priority date of an application for a certificate of assured water supply, designation of assured water supply, or analysis of assured water supply shall be the date that a complete and correct application is filed with the Director. In the case of two or more pending, conflicting applications for a certificate of assured water supply, designation of assured water supply, or analysis of assured water supply which the director determines to be complete and correct, priority shall be given to the application with the earliest priority date.~~

~~H. An application which the director determines to be complete and correct for a certificate of assured water supply for a development for which a certificate of assured water supply has previously been issued, or for which a plat was recorded prior to June 12, 1980, shall have priority among pending, conflicting applications according to the date on which the prior certificate of assured water supply was issued, or the date on which the prior plat had been recorded, provided that:~~

~~1. If the development has never been determined to have an assured water supply, the plat which is referenced in the application has not been substantially modified since the plat was recorded.~~

~~2. If the development has previously been issued a certificate of assured water supply, the plat referenced in the application has not been substantially modified since the certificate of assured water supply was issued and the certificate of assured water supply has not been revoked.~~

~~I. The owner of six or more lots which comprise a subset of a subdivision which has been platted prior to 1980 or for which a certificate has been issued is exempt from the~~

~~requirement to obtain a certificate of assured water supply if both of the following conditions are met:~~

- ~~1. The subdivision's plat has not changed since the effective date of this Article.~~
- ~~2. Water service is currently available to each lot.~~

A. A person may apply for a physical availability determination by submitting an application on a form prescribed by the Director with the fee required by R12-15-730, and providing the following information with the application:

1. The proposed source of water for which the applicant is seeking a determination of physical availability.
2. Evidence that the applicant has complied with subsection (C) of this Section, and
3. Any other information that the Director reasonably deems necessary to determine whether water is physically available in the area that is the subject of the application.

B. Each applicant shall sign an application for a physical availability determination. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the determination, the authorized representative may sign the application on the applicant's behalf.

C. An applicant for a physical availability determination shall demonstrate the following:

1. The volume of water that is physically available for 100 years in the area that is the subject of the application, according to the criteria in R12-15-716.

2. That the proposed sources of water will be of adequate quality, according to the criteria in R12-15-719.

D. After a complete application is submitted, the Director shall review the application and associated evidence to determine whether the applicant has demonstrated all of the criteria in subsection (C) of this Section. If the Director determines that the applicant has demonstrated all of the criteria in subsection (C) of this Section, the Director shall issue a physical availability determination.

E. Any person applying for a determination of assured water supply or a determination of adequate water supply may use an existing physical availability determination for purposes of R12-15-716. The Director shall consider any changes in hydrologic conditions for purposes of R12-15-716.

F. The issuance of a physical availability determination does not reserve any water for purposes of this Article.

**~~R12-15-703. Assured Water Supply Requirement — Physical Availability; Continuous Availability; Legal Availability~~ Analysis of Assured Water Supply**

~~A. The director shall approve an application for a certificate of assured water supply or designation of assured water supply only if the director determines that the certificate applicant or designation of AWS applicant will have sufficient supplies of groundwater, surface water, or effluent which are physically available as determined under subsection (B) of this Section, continuously available as determined under subsection (C) of this Section, and legally available under subsection (D) of this Section.~~

~~B. The director shall determine whether the applicant will have a sufficient supply of water which will be physically available to satisfy the applicant's 100-year projected water~~

demand, if the applicant is a certificate applicant, or will exceed the applicant's current and committed demands for 100 years, if the applicant is a designation of AWS applicant, in accordance with the following:

1. ~~If the proposed source is groundwater:~~

a. ~~The director shall determine the volume of ground water which will be available for the proposed use:~~

i. ~~If the applicant is a designation of AWS applicant, from wells owned by the applicant which are located within the applicant's service area as indicated on the current service area map on the date of application and from proposed wells which the director determines are likely to be constructed for future uses by the designation of AWS applicant within the applicant's service area.~~

ii. ~~If the applicant is a certificate applicant which will be served by a central distribution system, from wells which will serve the development which are located within the proposed municipal provider's service area or wells which the director determines are likely to be constructed for future uses within the service area of the proposed municipal provider.~~

iii. ~~If the applicant is a certificate applicant which will not be served by a central distribution system, from wells which the director determines are likely to be constructed on individual lots.~~

b. ~~In determining the quantity of groundwater available for the proposed use, the applicant shall submit a hydrologic study using a method of analysis approved by the director which accurately describes the hydrology of the affected area.~~

c. ~~The director shall consider groundwater to be physically available only if the~~

~~groundwater is to be withdrawn from depths not to exceed the following 100 year depth to static water level criteria:~~

<del>Location of withdrawal / type of development</del>	<del>Maximum 100 year depth to static water level</del>
<del>i. Phoenix, Tucson, or Prescott Active Management Areas / developments other than dry lot developments</del>	<del>1000 feet below land surface</del>
<del>ii. Pinal Active Management Area / developments other than dry lot developments</del>	<del>1100 feet below land surface</del>
<del>iii. For areas inside of active management areas / dry lot developments</del>	<del>400 feet below land surface</del>

~~d. The director shall determine the 100 year depth to static water level by adding:~~

- ~~i. The depth to static water level present on the date of application for the area from which groundwater withdrawals are proposed.~~
- ~~ii. The projected declines caused by existing demand, using the projected decline in the 100 year depth to static water level for the area from which groundwater withdrawals are proposed to occur during the 100 year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years prior to the date of application. If evidence is provided to the director of likely changes in pumpage~~

~~patterns and aquifer conditions as opposed to those patterns and conditions occurring historically, the director may determine projected declines using a model rather than evidence of past declines.~~

~~iii. The projected decline in the depth to static water level for the area from which groundwater withdrawals are proposed to occur during the 100-year period after the date of application, calculated by adding the projected groundwater demand of items (B)(1)(d)(iii)(1), (2) and (3), and then subtracting the projected demand of item (B)(1)(d)(iii)(4):~~

~~(1) Committed demand.~~

~~(2) The projected demand included within designations of assured water supply that is not existing demand or committed demand.~~

~~(3) Other lots within developments for which the director has issued an analysis of assured water supply pursuant to R12-15-712.~~

~~(4) The projected demand of subdivided lots whose plats have been abandoned.~~

~~iv. The projected decline in depth to static water level for the area from which groundwater withdrawals are proposed which the director projects will result from the applicant's proposed use over a 100-year period.~~

~~2. If the proposed source of water is surface water, other than Central Arizona Project water or Colorado River water:~~

~~a. The director shall determine the quantity of water annually available for the proposed use taking into consideration the priority date of the right or claim by calculating 120% of the firm yield of the proposed source from the point of diversion as limited by the capacity of the diversion works; except that, if the applicant demonstrates that~~

~~it will use an alternative source of water which is physically available during times of shortage in the proposed surface water supply, the director shall determine the quantity of water annually available for the proposed use by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works.~~

~~b. The director shall determine the firm yield or median flow as follows:~~

~~i. By calculating the firm yield or median flow at the point of diversion on the basis of a minimum of 20 calendar years of flow records from the point of diversion unless 20 calendar years of records are unavailable and the director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or~~

~~ii. By calculating the firm yield or median flow at the point of diversion using a hydrologic model which projects the firm yield or median flow taking into account a minimum of 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years prior to the date of application, the director shall require the applicant to submit evidence, as appropriate, in accordance with this subdivision.~~

~~3. If the proposed source of water is Central Arizona Project water:~~

~~a. If an applicant has a non declining, long term municipal and industrial subcontract for Central Arizona Project water, the director shall calculate the quantity of water annually available for the proposed use by calculating 100% of the annual amount of~~

- water established in the subcontract;
- b. ~~If an applicant has a lease for Indian priority Central Arizona Project water, the director shall calculate the annual quantity of water available for the proposed use by calculating 100% of the annual amount of water established in the lease;~~
- c. ~~If an applicant has a subcontract for Central Arizona Project water other than a non-declining, long term, municipal and industrial subcontract or a lease for Indian priority Central Arizona Project water, and the applicant demonstrates a backup supply of water, the director shall calculate the quantity of water annually available for the proposed use by calculating 100% of the annual amount of water established in the subcontract. The backup supply of water may be established with approval of the director by one or more of the following:~~
- ~~i. A drought response plan;~~
  - ~~ii. Recharge credits;~~
  - ~~iii. A contract for water with a multi county water conservation district, an active management area water district, or a county water augmentation authority;~~
  - ~~iv. Evidence that the applicant is a member service area or a member land of a multi county water conservation district, a water district member land or water district member service area of an active management area water district, or a district member of a groundwater replenishment district;~~
  - ~~v. Evidence of other backup supplies which are physically, continuously, and legally available.~~
- d. ~~If the applicant does not submit evidence of sufficient backup supplies, the director shall determine the annual availability of the Central Arizona Project water supply by~~



~~establishing a percentage of the annual amount established in the subcontract which the director determines to reasonably reflect the reliability of the applicant's Central Arizona Project water supply.~~

~~4. If the proposed source of water is Colorado River water:~~

~~a. And the priority of the contract provides reliability equal to or better than Central Arizona Project municipal and industrial water, the director shall calculate the quantity of water annually available for the proposed use by calculating 100% of the annual amount of water established in the contract;~~

~~b. And the contract provides reliability which is less than Central Arizona Project municipal and industrial water, and the applicant demonstrates a backup supply of water, the director shall calculate the quantity of water annually available for the proposed use by calculating 100% of the annual amount of water set forth in the contract. The backup supply of water may be established by one or more of the following:~~

~~i. A drought response plan;~~

~~ii. Recharge credits;~~

~~iii. A contract for water with a multi-county water conservation district, an active management area water district, or a county water augmentation authority;~~

~~iv. Evidence that the applicant is a member service area or a member land of a multi-county water conservation district, a water district member land or water district member service area of an active management area water district, or a district member of a groundwater replenishment district that will provide replenishment services;~~

- v. ~~Evidence of other backup supplies which are physically, continuously, and legally available.~~
  - e. ~~If the applicant does not submit evidence of sufficient backup supplies, the director shall determine the annual availability of the Colorado River water supply by establishing a percentage of the annual amount established in the contract which the director determines to reasonably reflect the reliability of the applicant's Colorado River water supply.~~
5. ~~If the proposed source of water is effluent which will be used directly:~~
  - a. ~~The director shall:~~
    - i. ~~Estimate the annual volume of effluent which will be available to the applicant by evaluating the current, metered production or the projected production of effluent;~~
    - ii. ~~Limit the annual volume of effluent calculated to be available under subsection (B)(5)(a)(i) to the applicant's projected annual demand for the direct use of the effluent;~~
  - b. ~~The applicant's proposed effluent use shall be in accordance with any water quality requirements established by the Arizona Department of Environmental Quality.~~
6. ~~If the proposed source of water is water to be recovered from a storage project and the project is permitted to a person other than an active management area water district or a county water augmentation authority:~~
  - a. ~~The director shall calculate the volume of water which will be available for 100 years as represented by credits for stored water existing on the date of application in a manner consistent with the provisions of A.R.S. Title 45, Chapter 3, Articles 1 and 3.~~
  - b. ~~If the applicant proposes to use credits for stored water which do not exist at the date~~

~~of application, the director shall evaluate the following in determining whether to include the proposed credits in calculating the volume of the applicant's proposed supplies:~~

- ~~i. The terms of a contract to obtain water to store in a storage project.~~
- ~~ii. The physical availability, continuous availability, and legal availability of the water proposed to be stored or the in lieu water, as applicable.~~
- ~~iii. The presence of an existing storage project which will be available for use for the proposed storage.~~
- ~~iv. The existence of all required permits of an adequate duration.~~

~~7. If the proposed source of water is credits for stored water which do not exist at the date of application, and which are proposed to be obtained from an active management area water district or a county water augmentation authority, the director shall consider the water represented by the credits to be physically available only if all of the following apply:~~

- ~~a. The authority or district has the legal right to sell the credits to the applicant.~~
- ~~b. The authority or district has prepared and the director has approved a plan of operation for the authority or district which the authority or district updates at least every five calendar years that evidences the authority's or district's current capability to meet the water demands of its customers for the five calendar years following the calendar year in which the authority or district submits its plan and the authority's or district's projected capability to meet the water demands of its customers for the subsequent 15 calendar years.~~
- ~~c. The authority or district and the applicant have executed an agreement for the sale of~~

the credits. The agreement shall require:

- ~~i. That the applicant fund an escrow account with a sum of money necessary to purchase credits which will satisfy five times the applicant's total annual water demand as calculated in subsection (B)(7)(c)(v).~~
- ~~ii. That if the director approves the application, the funds in the escrow account shall be transferred to the authority or district.~~
- ~~iii. That if the applicant is a certificate applicant, the applicant shall also pay to the authority or district each calendar year for a period of ten calendar years, beginning the calendar year in which the plat is recorded, a sum of money necessary to purchase credits which will satisfy twice the applicant's total annual water demand.~~
- ~~iv. That if the applicant is a designation of AWS applicant, the applicant shall also pay to the authority or district each calendar year for a period of ten calendar years, beginning the calendar year in which the applicant first receives stored credits from the authority or district, a sum of money necessary to purchase credits which will satisfy twice the applicant's total annual water demand.~~
- ~~v. That after the expiration of the time period specified in either subsection (B)(7)(c)(iii) or (iv), whichever is applicable, the certificate applicant or the designation of AWS applicant shall pay the authority or district an annual sum of money necessary to purchase credits which will satisfy the applicant's total annual water demand. The applicant's total annual water demand shall be calculated by subtracting both the volume of groundwater the applicant may use consistent with the management goal as established in R12-15-705 and the~~

~~volume of any other source of water which the director has determined to be physically available to the applicant pursuant to this Section from the applicant's projected 100-year water demand and dividing the result by 100.~~

~~d. The director determines that the applicant has provided financial guarantees to ensure that the applicant will perform its obligations under the agreement required in subsection (B)(7)(c).~~

~~8. If an applicant proposes to recover stored water from outside the area of impact, sufficient water must exist for the withdrawals consistent with the depth limitations established in subsection (b)(1)(c) as well as any criteria for the withdrawals prescribed in the management plan in effect at the date of application.~~

~~9. If the proposed source of water is groundwater which the applicant proposes to transfer from a groundwater basin outside the active management area where the use is proposed to a basin inside the active management area where the use is proposed, the director shall calculate the volume of groundwater physically available pursuant to the provisions of subsection (B)(1), except to the extent the depth to static water level, decline rate, or maximum volume of water is otherwise prescribed by A.R.S. Title 45.~~

~~10. If the applicant will obtain the source of water through a water exchange agreement, evidence that the source of water which the applicant or the applicant's customers will use will be physically available in accordance with the terms of this subsection.~~

~~C. The director shall determine that an applicant has or will have a sufficient supply of water which will be continuously available if the applicant is a certificate applicant which presents sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to satisfy the 100-year projected water demand of the applicant or the~~

~~applicant is a designation of AWS applicant which presents sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to exceed the applicant's current and committed demands for 100 years, and:~~

- ~~1. If the proposed source of water is groundwater to be withdrawn by a municipal provider, wells will be constructed in a timely manner within the municipal provider's service area which:
  - ~~a. Are of a capacity which exceeds the applicant's current and committed demands on a continuous basis for 100 years, if the applicant is a designation of AWS applicant.~~
  - ~~b. Are of a capacity which satisfies the applicant's 100 year projected water demand, if the applicant is a certificate applicant.~~~~
- ~~2. If the proposed source of water is surface water other than Central Arizona Project water or Colorado River water, the projected volume to be diverted from the source is perennial at the point of diversion, unless the director determines that a continuous supply will exist because of one or more of the following:
  - ~~a. Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands. For the purposes of this subsection (c)(2)(a), adequate storage facilities means:
    - ~~i. For a designation of AWS applicant, facilities which can store enough water to exceed the applicant's current and committed demands for the duration of an anticipated shortage.~~
    - ~~ii. For a certificate applicant, facilities which can store enough water to satisfy the applicant's 100 year projected water demand for the duration of an anticipated~~~~~~

~~shortage.~~

- ~~b. The applicant has presented evidence of supplies of other sources of water which the director has determined will be physically, continuously, and legally available to the applicant to supplement the applicant's proposed surface water supplies.~~
  - ~~c. The applicant will withdraw surface water from wells which are of a capacity:
    - ~~i. To exceed the current and committed demands of the applicant on a continuous basis for 100 years, if the applicant is a designation of AWS applicant.~~
    - ~~ii. To satisfy the 100-year projected water demand of the applicant on a continuous basis if the applicant is a certificate applicant.~~~~
  - ~~d. The applicant has submitted a drought response plan which the director has determined will conserve an equal volume of water to the volume of water which is subject to drought.~~
- ~~3. If the proposed source of water is Central Arizona Project water, the director determines that a continuous supply will exist because of one or more of the following:~~
- ~~a. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of Central Arizona Project water is not available to meet the applicant's water demands. For the purposes of this subsection (c)(3)(a), adequate storage facilities means:
    - ~~i. For a designation of AWS applicant, facilities which can store enough water to exceed the applicant's current and committed demands for the duration of an anticipated shortage.~~
    - ~~ii. For a certificate applicant, facilities which can store enough water to satisfy the applicant's 100-year projected water demand for the duration of an anticipated~~~~

~~shortage.~~

~~b. The applicant has presented evidence of supplies of other sources of water which the director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed Central Arizona Project water supplies.~~

~~c. The applicant has submitted a drought response plan which the director has determined will conserve an equal volume of water to the volume which is subject to drought.~~

~~4. If the proposed source of water is Colorado River water, the director determines that a continuous supply will exist because of one or more of the following:~~

~~a. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of Colorado River water is not available to meet the applicant's water demands. For the purposes of this subsection (c)(4)(a), adequate storage facilities means:~~

~~i. For a designation of AWS applicant, facilities which can store enough water to exceed the applicant's current and committed demands for the duration of an anticipated shortage.~~

~~ii. For a certificate applicant, facilities which can store enough water to satisfy the applicant's 100-year projected water demand for the duration of an anticipated shortage.~~

~~b. The applicant has presented evidence of supplies of other sources of water which the director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed Colorado River water supplies.~~

~~c. The applicant has submitted a drought response plan which the director has~~



determined will conserve an equal volume of water to the volume of water which is subject to drought.

5. ~~If the proposed source of water is effluent, the applicant presents evidence that:~~

a. ~~If the applicant is a designation of AWS applicant, the applicant's ability to exceed the applicant's current and committed demands for 100 years which are to be satisfied with effluent will not be affected by fluctuations in the supply of effluent.~~

b. ~~If the applicant is a certificate applicant, the applicant's ability to satisfy the applicant's 100 year projected water demand which is to be satisfied with effluent will not be affected by fluctuations in the supply of effluent.~~

6. ~~If the applicant will obtain the proposed source of water through a water exchange agreement, evidence that the source of water which the applicant or the applicant's customers will use will be continuously available in accordance with the provisions of this subsection.~~

**D.** ~~The director shall determine that an applicant will have sufficient supplies of water which will be legally available to the applicant to satisfy the applicant's 100 year projected water demand, if the applicant is a certificate applicant, or will exceed the applicant's current and committed demands for 100 years, if the applicant is a designation of AWS applicant, in accordance with the following:~~

1. ~~If the proposed source of water is groundwater to be withdrawn within an active management area, evidence that the certificate applicant or the designation of AWS applicant has a service area right or other appropriate non irrigation grandfathered right to withdraw the ground water.~~

2. ~~If the proposed source of water is surface water, other than Central Arizona Project water~~

or Colorado River water:

a. ~~The applicant shall submit the following evidence:~~

i. ~~Evidence that the applicant has a certificated surface water right, decreed water right, or a pre 1919 claim for the proposed source, or evidence that the applicant is not the holder of a water right but receives water pursuant to a water right which is appurtenant to the land which is the subject of the application, providing the water right may neither be legally withheld nor severed and transferred by the holder of the water right.~~

ii. ~~If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre 1919 claim, evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years prior to the date of application, evidence that a court has determined that the right has not been abandoned, or evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.~~

b. ~~And the applicant presents evidence of a certificated surface water right, a decreed water right, or a pre 1919 claim, the director shall determine that the volume of water which is legally available pursuant to the applicant's water right or claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the director shall determine the volume of water which is legally available based on the adjudicated amount of water.~~

3. ~~If the proposed source of water is Central Arizona Project water, evidence that the applicant has entered into a subcontract with a multi-county water conservation district~~

~~for the proposed volume of Central Arizona Project water. The director shall presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability to the applicant of the volume of Central Arizona Project water specified in the subcontract for 100 calendar years.~~

- ~~4. If the proposed supply of water is Colorado River water, evidence that the applicant has a contract with the United States Secretary of the Interior for the proposed supply.~~
- ~~5. If the proposed source of water is effluent, evidence that the applicant has the legal right to use, recapture, or reuse the effluent.~~
- ~~6. If the applicant will obtain the proposed source of water through a written contract other than a water exchange agreement, a contract between a certificate applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation district, the director shall determine whether the proposed source of water is legally available to the applicant, the term of years for which the source is legally available, and the volume of water which is legally available as follows:~~
  - ~~a. The director shall determine that the proposed source of water is legally available to the applicant only if:~~
    - ~~i. The person providing the water under the contract has a legal right to the water in accordance with the terms of this subsection.~~
    - ~~ii. The director determines that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant.~~
  - ~~b. The director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract.~~

- ~~c. The director shall determine the quantity of water legally available to the applicant based on the volume established in the contract.~~
- ~~7. If the applicant is a certificate applicant, the applicant has submitted evidence indicating that the applicant has entered into a notice of intent to serve agreement signed by both the applicant and the municipal provider proposed to serve the applicant, which contains a statement of the municipal provider's intent to serve all of the proposed lots and uses that are subject to this determination of an assured water supply.~~
- ~~8. If the applicant is a certificate applicant and the municipal provider proposed to serve the applicant is a city or town, the applicant has submitted evidence indicating that the applicant is located within the incorporated limits of the city or town or the applicant has submitted evidence of the legal right of the city or town to serve water to the applicant outside the city or town's incorporated limits.~~
- ~~9. If the applicant is a certificate applicant and the municipal provider proposed to serve the applicant is a private water company, the applicant has submitted evidence:~~
- ~~a. Of the private water company's certificate of convenience and necessity approved by the Arizona Corporation Commission. The director shall only determine that the water provided by the private water company is legally available if the certificate of convenience and necessity is free of conditions which would likely result in the revocation of the certificate of convenience and necessity.~~
- ~~b. That the applicant is located within the certificated area or within any other area in which the Arizona Corporation Commission authorizes the private water company to serve water.~~
- ~~10. If the applicant is a private water company applying for a designation of assured water~~

~~supply, evidence that the applicant has a certificate of convenience and necessity approved by the Arizona Corporation Commission authorizing the proposed water use.~~

~~11. If the applicant will obtain the proposed source of water through a water exchange agreement, evidence that the applicant's water exchange agreement satisfies the requirements of A.R.S. Title 45.~~

~~12. If the director can only determine the proposed source of water to be physically available under this Section because of the use of storage facilities by the applicant, evidence of the applicant's legal right to store water in the facilities.~~

~~E. Except for a certificate applicant which is a member land of a multi county water conservation district or a water district member land of an active management area water district, for the purposes of determining the physical, continuous, and legal availability of surface water, the director shall determine that the proposed source is unavailable if the certificate applicant does not independently obtain a renewable water source and the municipal provider is undesignated and would fail to satisfy the requirements established in R12-15-705 if the provider were subject to those requirements.~~

~~F. To determine compliance with the requirements established in subsections (B), (C), and (D) of this Section, the director shall maintain a record, updated annually, of the total water supply and demand status for each holder of a certificate of assured water supply and designation of assured water supply.~~

~~G. The director shall make an initial determination that a certificate applicant or a designation of AWS applicant satisfies the requirements established in subsections (B), (C), and (D) of this Section if the director determines that:~~

~~1. For a certificate applicant, the volume of the applicant's proposed supply of water which~~

~~the director determines to be physically, continuously, and legally available in accordance with the provisions of this Section is equal to or exceeds the volume of the applicant's 100-year projected water demand.~~

~~2. For a designation of AWS applicant, the volume of the applicant's proposed supply of water which the director determines to be physically, continuously, and legally available in accordance with the provisions of this Section exceeds the volume of the applicant's current and committed demands for 100 years.~~

~~H. To determine the volume of the supply of surface water and effluent which is physically, continuously, and legally available for an applicable period of years, the director will multiply the number of years in that period by the annual volume of those sources of water which the director determines to satisfy the requirements of this Section.~~

~~I. The volume of groundwater which the director determines to satisfy the requirements of this Section shall not exceed the volume of groundwater which the director determines to be consistent with the management goal of the active management area pursuant to R12-15-705.~~

~~J. After the director calculates the volume of water, from any source, which the holder of a certificate or designation has proven to satisfy the requirements of this Section, the director shall annually subtract from the volume attributed to groundwater and stored credits the volume of groundwater and stored credits which the holder of the certificate or designation uses each calendar year.~~

~~K. For a holder of a designation whose designation has been modified under R12-15-709 that calendar year, the director shall add any additional volume of water, from any source, which the director determines is physically, continuously, and legally available for the proposed use.~~

~~L. The director shall determine that a holder of a certificate or a designation is no longer in compliance with the requirements established in this Section if the holder of the certificate or the designation no longer has a physically, continuously, and legally available volume of water from any source:~~

- ~~1. Which equals or exceeds the holder's remaining projected 100-year water demand, if the holder is a holder of a certificate; or~~
- ~~2. Which exceeds the holder's current and committed demands for 100 years, if the holder is a holder of a designation.~~

A. A person proposing to develop land that will not be served by a designated provider may apply for an analysis of assured water supply before applying for a certificate. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona or may consent to the inclusion of such land in an application.

B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the fee required by R12-15-730, and attach the following:

1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted, demonstrating the ownership of the land that is the subject of the application;
2. A description of the development, including:
  - a. A map of the land uses included in the development,
  - b. A list of water supplies proposed to be used by the development,
  - c. A summary of land use types included in the development, and

- d. An estimate of the water demand for the land uses included in the development; and
  - 3. Evidence that the applicant has complied with subsection (E) of this Section.
- C. An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the analysis, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:
  - 1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716.
  - 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717.
  - 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718.
  - 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
  - 5. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721.



6. Any proposed groundwater use is consistent with the management goal, according to the criteria in R12-15-722.

F. For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:

1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1) of this Section, the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).

2. If an analysis holder applies for a certificate for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the certificate, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the certificate that will be met with groundwater.

G. The Director shall reduce the amount of groundwater considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the name of the person's designee for purposes of this subsection.

H. The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:

1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
2. The analysis holder has made material progress in developing the land included in the analysis.
3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.

I. After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (H)(2), or (H)(3) of this Section.

J. The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

**R12-15-703.01.——~~Assured Water Supply Requirement - Legal Availability of Central~~**

~~**Arizona Project Water or Colorado River Water Leased from an Indian  
Community Repealed**~~

~~**A.** In addition to the water supplies that the Director determines are legally available to an applicant under R12-15-703(D), the Director shall determine that Colorado River water or Central Arizona Project water leased from an Indian community is legally available to an applicant for a certificate or designation of assured water supply in an amount determined under this Section, if both of the following apply:~~

- ~~1. The water leased has a priority equal to or higher than Central Arizona Project municipal and industrial water.~~
- ~~2. The Indian community is expressly authorized by an Act of Congress to lease the water for use off Indian community lands.~~

~~**B.** For water that meets the requirements of subsection (A), the Director shall determine that there is a legally available supply of water for 100 years for the annual amount of water available under the lease, if either of the following apply:~~

- ~~1. The water upon which the assured water supply application is based is available under the lease for at least 100 years from any time during the year in which the applicant files the assured water supply application.~~
- ~~2. The term of the lease has less than 100 years remaining in the year in which the applicant files the assured water supply application, and the applicant establishes the availability of a supplemental water supply, that together with the leased water, provides a 100-year water supply. The supplemental water supply shall be one of the following supplies of water:~~
  - ~~a. Groundwater, if the groundwater is physically, continuously, and legally available to~~

- ~~the applicant under R12-15-703 and if the groundwater use is consistent with achieving the management goal under R12-15-705.~~
- ~~b. Water recovered through the use of long term storage credits held by the applicant, if both of the following apply:~~
- ~~i. The water to be recovered through the use of long term storage credits is physically and continuously available to the applicant under R12-15-703.~~
  - ~~ii. If the applicant is to use the long term storage credits before the beginning of the lease term, the applicant has obtained a recovery well permit that allows the applicant to recover water by redeeming the long term storage credits.~~
- ~~c. Water recovered through the use of long term storage credits that will be accrued by the applicant, if all of the following apply:~~
- ~~i. No more than 20 years of the applicant's supplemental water supply will be provided by the long term storage credits.~~
  - ~~ii. The applicant demonstrates to the Director that it will accrue the long term storage credits within 20 years of the effective date of the designation or certificate by storing the water under an issued water storage permit at a permitted storage facility.~~
  - ~~iii. The applicant has a supply of water to be stored that is physically, continuously, and legally available to the applicant under R12-15-703 for the time necessary to accrue the needed long term storage credits.~~
  - ~~iv. The water to be recovered through the use of long term storage credits is physically and continuously available to the applicant under R12-15-703.~~
  - ~~v. If the applicant is to use the long term storage credits before the beginning of the~~

~~lease term, the applicant has obtained a recovery well permit that allows the applicant to recover water by redeeming the long term storage credits.~~

- ~~vi. If the applicant is a private water company, the Arizona Corporation Commission has granted any necessary approval to the applicant for the storage of the water.~~
- ~~d. Any other water that is physically, continuously, and legally available to the applicant under R12-15-703.~~

~~C. If the Director finds that the applicant has a legally available supply of water for 100 years under subsection (B) and designates the applicant as having an assured water supply, or if the Director previously determined that the applicant's Colorado River water or Central Arizona Project water leased from an Indian community was legally available for 100 years under R12-15-703(D) and designated the applicant as having an assured water supply, the Director shall determine that the city, town, or private water company designated as having an assured water supply continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease, if both of the following apply:~~

~~1. One of the following apply:~~

- ~~a. The lease has at least 50 years remaining in its term.~~
- ~~b. The lease has at least 40 years remaining in its term, and the city, town, or private water company provides evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease.~~

~~2. One of the following apply:~~

- ~~a. Of the total water supplies that the city, town, or private water company establishes as physically, continuously, and legally available under R12-15-703 and under this Section during any year, no more than 15% of those water supplies are obtained~~

- through leases with Indian communities.
- b. ~~Groundwater will be physically, continuously, and legally available to the city, town, or private water company under R12-15-703 at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and one of the following apply:~~
- i. ~~The projected use of groundwater is consistent with achieving the management goal under R12-15-705.~~
- ii. ~~The city, town, or private water company enters into a consent order with the Director under which the city, town, or private water company agrees to replace through replenishment or storage any groundwater used at the end of the lease term that is not consistent with achieving the management goal under R12-15-705. The city, town, or private water company shall agree in the consent order that its specific performance is the only remedy in event of default under the consent order.~~
- c. ~~A non-groundwater source of water will be physically, continuously, and legally available to the city, town, or private water company under R12-15-703 at the end of the lease term to substitute for the leased water for the remainder of the 100-year period.~~
- d. ~~The governing board or council of the city, town, or private water company submits to the Director a resolution requesting that the city, town, or private water company be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (C)(2)(a) of this Section, to 20%, and the Director finds that all of the following apply:~~

- ~~i. Of the total water supplies that the city, town, or private water company establishes as physically, continuously, and legally available under R12-15-703 and this Section during any year, no more than 20% of those water supplies are obtained through leases with Indian communities.~~
- ~~ii. Of the total water supplies that the city, town, or private water company establishes as physically, continuously, and legally available under R12-15-703 and this Section during any year, no more than 15% of those water supplies are obtained through any single lease with an Indian community.~~
- ~~iii. The city, town, or private water company does not meet the requirements of subsection (C)(2)(a), (b), or (c) of this Section.~~

**~~R12-15-704. Assured Water Supply Requirement - Water Quality~~ Certificate of Assured Water Supply**

- ~~A. The director shall approve an application for a certificate of assured water supply or designation of assured water supply only if the applicant submits information from which the director determines that the applicant's proposed water sources will satisfy existing state water quality requirements and any other water quality standards which are effective on the date of application and which are applicable to the proposed water use after any required treatment.~~
- ~~B. In making the determination described in subsection (A) of this Section, the director may consider expected changes in the quality of the proposed sources of water, including the migration of poor quality groundwater.~~
- ~~C. The director shall establish as a condition for a designation of assured water supply that the municipal provider shall satisfy any state water quality requirements established for the~~

~~applicant's proposed use after the date of designation. If the municipal provider fails to satisfy this condition, the director may terminate the designation of assured water supply after consultation with the director of the Arizona Department of Environmental Quality.~~

A. An application for a certificate shall be filed by the current owner of the land that is the subject of the application. Potential purchasers and affiliates may also be included as applicants.

B. An applicant for a certificate shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and provide the following:

1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:

a. For an applicant that is the current owner, one of the following:

i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or

ii. Evidence that the CAGR has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application;

b. For an applicant that is a potential purchaser, evidence of a purchase agreement; or

c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;

2. A plat of the subdivision;

3. An estimate of the 100-year water demand for the subdivision;

4. A list of all proposed sources of water that will be used by the subdivision;

5. Evidence that the criteria in subsections (F) or (G) of this Section are met; and



6. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.

C. Each applicant shall sign the application for a certificate. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.

D. The Director shall give public notice of an application for a certificate as provided in A.R.S. § 45-578.

E. After a complete application is submitted, the Director shall review the application and associated evidence to determine:

1. The estimated water demand of the subdivision;
2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
3. Whether the applicant has demonstrated all of the requirements in subsection (F) or subsection (G) of this Section.

F. Except as provided in subsection (G) of this Section, the Director shall issue a certificate if the applicant demonstrates all of the following:

1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
2. Sufficient supplies of water are continuously available to meet the estimated water

demand of the subdivision, according to the criteria in R12-15-717;

3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;

4. The sources of water are of adequate quality, according to the criteria in R12-15-719;

5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision, according to the criteria in R12-15-720;

6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and

7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management goal, according to the criteria in R12-15-722.

G. If the Director previously issued a certificate for the subdivision, the Director shall issue a new certificate to the applicant if the applicant demonstrates that all of the requirements in subsection (F) are met or that all of the following apply:

1. Any changes to the plat for which the previous certificate was issued are not material, according to the criteria in R12-15-708;

2. If groundwater is a proposed source of supply for the subdivision, the proposed groundwater withdrawals satisfied the physical availability requirements in effect at the time the complete and correct application for the previous certificate was submitted;

3. Any proposed sources of water, other than groundwater, are physically available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-716;

4. Any proposed sources of water other than groundwater are continuously available to

satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-717;

5. The proposed uses of groundwater withdrawn within an AMA were consistent with the achievement of the management goal according to the criteria in effect at the time the complete and correct application for the previous certificate was submitted; and

6. The applicant demonstrates that the requirements in subsections (F)(3) through (F)(6) of this Section are met.

H. Before issuing a certificate, the Director shall classify the certificate for the purposes of R12-15-705 and R12-15-706 as follows:

1. Type A certificate. The Director shall classify the certificate as a Type A certificate if the applicant meets the criteria in R12-15-720(A)(1) and all of the subdivision's estimated water demand will be met with one or more of the following:

a. Groundwater served by a proposed municipal provider pursuant to an existing service area right;

b. Groundwater served by a proposed municipal provider pursuant to a pending service area right, if the proposed municipal provider currently holds or will hold the well permit;

c. CAP water served by a municipal provider pursuant to the proposed municipal provider's non-declining, long-term municipal and industrial subcontract;

d. Surface water served by a proposed municipal provider pursuant to the proposed municipal provider's surface water right or claim;

e. Effluent owned and served by a proposed municipal provider; or

f. A Type 1 grandfathered right appurtenant to the land on which the groundwater will

be used and held by a proposed municipal provider.

2. Type B certificate. The Director shall classify all certificates that do not meet the requirements of subsection (H)(1) of this Section as Type B certificates.

I. The Director shall review an application for a certificate pursuant to the licensing time-frame provisions in R12-15-401.

J. An owner of six or more lots is not required to obtain a certificate if all of the following apply:

1. The lots comprise a subset of a subdivision for which:

a. A plat was recorded before 1980; or

b. A certificate was issued before February 7, 1995;

2. No changes were made to the plat since February 7, 1995; and

3. Water service is currently available to each lot.

K. A new owner of all or a portion of a subdivision for which a plat has been recorded is not required to obtain a certificate if all of the following apply:

1. The Director previously issued a Type A certificate for the subdivision pursuant to subsection (H)(1) of this Section or R12-15-707;

2. Water service is currently available to each lot; and

3. There are no material changes to the plat for which the certificate was issued, according to the criteria in R12-15-708.

L. A person may request a letter stating that the owner is not required to obtain a certificate pursuant to subsection (J) or subsection (K) of this Section by submitting an application on a form prescribed by the Director and attaching evidence that the criteria of subsection (J) or subsection (K) are met. Upon receiving an application pursuant to this subsection, the

Director shall:

1. Review the application pursuant to the licensing time-frame provisions in R12-15-401.
2. Determine whether the criteria of subsection (J) or subsection (K) of this Section are met.
3. If the Director determines that the criteria of subsection (J) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner is not required to obtain a certificate.
4. If the Director determines that the criteria of subsection (K) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner and any future owners are not required to obtain a certificate.

**~~R12-15-705. Assured Water Supply Requirement -- Consistency with Management Goal~~**

**Assignment of Type A Certificate of Assured Water Supply**

- ~~A. The Director shall approve an application for a certificate of assured water supply or a designation of assured water supply only if the applicant submits information from which the Director determines that the proposed groundwater use will be consistent with the achievement of the management goal of the active management area.~~
- ~~B. In the Prescott Active Management Area, the proposed use of an applicant for a certificate of assured water supply or a designation of assured water supply is consistent with the achievement of the management goal of the active management area, regardless of the volume of groundwater withdrawn from within the active management area for the proposed use, until the Director enters a final decision and order determining that the Prescott Active Management Area is no longer at safe yield under the provisions of this Article.~~
- ~~C. The Director shall determine whether the Prescott Active Management Area continues to be at safe yield by analyzing a minimum of three annual data reports containing information on:~~

- ~~1. Groundwater levels,~~
- ~~2. Changes in groundwater levels,~~
- ~~3. Pumpage volumes from confined and unconfined aquifers,~~
- ~~4. Long term precipitation records,~~
- ~~5. Surface water flow records,~~
- ~~6. A comparative evaluation of groundwater conditions as related to climatic normal conditions.~~

~~D. When the reports from three successive annual data reports using normalized information, including committed demand and demands associated with the groundwater allocation for designated entities for calendar year 1995, made in accordance with subsection (F)(2), show ongoing water level declines and increased pumpage, the Director shall make a preliminary determination that the Prescott Active Management Area is no longer at safe yield.~~

~~E. Before entering a final decision and order that the Prescott Active Management Area is no longer at safe yield, the Director shall publish a notice once each week for two consecutive weeks in a newspaper of general circulation in Yavapai County stating that the Director shall conduct a hearing to determine whether the Prescott Active Management Area is no longer at safe yield. After publishing notice in the manner described above, the Director shall hold a hearing in the Prescott Active Management Area within 30 days of the last notice. Any person may appear at the hearing and submit oral or documentary evidence on the issue of whether the Prescott Active Management Area is no longer at safe yield. A person may submit written comments, concerning matters discussed at the hearing, within 30 days after the hearing. Within 180 days after the termination of the public comment period, the Director shall enter a final decision and order, determining either that the Prescott Active Management~~

~~Area remains at safe yield or that the Prescott Active Management Area is no longer at safe yield.~~

~~F. If the Director enters a final decision and order determining that the Prescott Active Management Area is no longer at safe yield, the Director shall calculate the volume of groundwater that may be withdrawn consistent with the management goal of the active management area in accordance with subsection (A) by adding to the volume of assured water supply credits determined in accordance with subsection (M), the volume calculated as follows:~~

~~1. If the application is for a certificate of assured water supply:~~

- ~~a. Subtract the declaration year from 2025, unless the date of application occurs subsequent to the declaration year, in which case subtract the year of the date of application from 2025.~~
- ~~b. Determine the total volume of water, from any source, projected by the Director to meet 100 percent of the applicant's water demands for the 15th calendar year after the date of application, consistent with the conservation requirements established in the management plan in effect on the date of application for the municipal provider proposed to serve the applicant.~~
- ~~c. Multiply the number determined in subsection (F)(1)(a) by the amount calculated in subsection (F)(1)(b).~~
- ~~d. Divide the product obtained in subsection (F)(1)(c) by two. The minimum volume that may be calculated in this subsection is zero acre feet.~~

~~2. If the application is for a designation of assured water supply:~~

- ~~a. And, except as provided in subsection (F)(2)(c), the date of application occurs within~~

~~180 days after the declaration date:~~

- ~~i. Multiply 100 by the volume of groundwater withdrawn from within the active management area by the applicant during the declaration year or calendar year 1995, whichever volume is greater, consistent with the conservation requirements established for the applicant in the management plan in effect on the date of application.~~
- ~~ii. Determine the volume of the applicant's total water demand, from any source, for the declaration year, consistent with the conservation requirements established for the applicant in the management plan in effect on the date of application.~~
- ~~iii. Determine the volume of the applicant's total water demand, from any source, for the 15th calendar year after the declaration year, consistent with the conservation requirements established for the applicant in the management plan in effect on the date of application.~~
- ~~iv. Subtract the volume calculated in subsection (F)(2)(a)(ii) from the volume calculated in subsection (F)(2)(a)(iii).~~
- ~~v. Subtract the declaration year from 2025.~~
- ~~vi. Multiply the volume calculated in subsection (F)(2)(a)(iv) by the number calculated in subsection (F)(2)(a)(v).~~
- ~~vii. Divide the product obtained in subsection (F)(2)(a)(vi) by two.~~
- ~~viii. Add the volume calculated in subsection (F)(2)(a)(vii) to the volume calculated in subsection (F)(2)(a)(i).~~
- ~~b. And, except as provided in subsection (F)(2)(c), the date of application does not occur within 180 days after the declaration date, subtract from the volume calculated in~~



~~subsection (F)(2)(a) the volume of groundwater calculated in subsection (F)(2)(b)(iii).~~

~~The volume shall be calculated as follows:~~

~~i. Determine the volume of groundwater withdrawn by the applicant from within the active management area during the period beginning January 1 of the declaration year and ending either December 31 of the declaration year or December 31 of the calendar year before the date of the application, whichever is later.~~

~~ii. Multiply the volume of groundwater withdrawn by the applicant from within the active management area in the declaration year by the number of calendar years in the period beginning with the declaration year and ending with the calendar year before the date of application.~~

~~iii. Subtract from the volume calculated in subsection (F)(2)(b)(i) the volume calculated in subsection (F)(2)(b)(ii).~~

~~c. And the applicant did not exist as of the declaration date, or the date of application occurs after calendar year 2025, the maximum volume of groundwater that the applicant may use for the proposed use for 100 years from the date of application consistent with the achievement of the management goal for the Prescott Active Management Area is zero acre-feet.~~

~~3. If the Director receives an application for a certificate of assured water supply or a designation of assured water supply before the declaration year, the Director shall perform the calculations described in subsection (F)(1) or (2) after the Director enters a final decision and order determining that the Prescott Active Management Area is no longer at safe yield.~~

~~G. Except as provided in subsection (I) or (J), with respect to the Phoenix and Tucson Active~~

Management Areas, the Director shall determine the volume of groundwater that a certificate or a designation of AWS applicant may withdraw from within the active management area for the proposed use for 100 years from the date of application consistent with the management goal of the active management area by adding to any volume of credits determined by the Director, in accordance with subsections (K) and (M), the volume of groundwater calculated as follows:

1. If the application is for a certificate of assured water supply, multiply the applicable allocation factor located in the table below by the total volume of water, from any source, projected to meet 100 percent of the applicant's water demand in the 15th calendar year after the date of application, consistent with the applicable conservation requirements established in the management plan in effect on the date of application for the municipal provider proposed to serve the applicant.

LOCATION OF PROPOSED DEVELOPMENT	MANAGEMENT PERIOD / DATE OF APPLICATION	ALLOCATION FACTOR
TUCSON AMA	Second	15
	Third	8
	Fourth	4
	Fifth	2
	After Fifth	0
PHOENIX AMA	Second	7.5

	Third	4
	Fourth	2
	Fifth	1
	After Fifth	0

~~2. If the application is for a designation of assured water supply and the applicant provided water to its customers before the effective date of this Article, multiply the total volume of water, from any source, consistent with the first intermediate conservation requirement established in the second management plan, provided by the applicant to its customers during the calendar year before the effective date of this Article by 15 if the applicant is located in the Tucson Active Management Area or by 7.5 if the applicant is located in the Phoenix Active Management Area.~~

~~3. If the application is for a designation of assured water supply, and the applicant commences providing water to its customers on or after the effective date of this Article, zero acre-feet of groundwater.~~

~~H. Except as provided in subsection (I) or (J), with respect to the Pinal Active Management Area, the Director shall determine the volume of groundwater that an applicant for a certificate of assured water supply or a designation of assured water supply may withdraw from the active management area consistent with the achievement of the management goal of the active management area by adding the volume of assured water supply credits, determined annually in accordance with subsection (M), to the volume calculated as follows:~~

~~1. If the applicant is a certificate applicant that will be served by a small municipal provider~~

~~or a municipal provider that is required to comply with a total gallons per capita per day requirement or a non-per capita requirement established in the management plan in effect on the date of application for the Pinal Active Management Area:~~

~~a. Determine the proposed development's 15-year build-out population; and~~

~~b. Multiply the population determined in subsection (H)(1)(a) by the product of 125 gallons per capita per day and the number of days in the calendar year.~~

~~2. If the applicant is a certificate applicant that will be served by an existing municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application for the Pinal Active Management Area, zero-acre-feet.~~

~~3. If the applicant is a certificate applicant that will be served by a new municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application for the Pinal Active Management Area:~~

~~a. Determine the proposed development's 15-year build-out population; and~~

~~b. Multiply the population determined in subsection (H)(3)(a) by the product of 62.5 gallons per capita per day and the number of days in the calendar year.~~

~~4. If the applicant is a designation of AWS applicant that is a small municipal provider or a municipal provider that is required to comply with a total gallons per capita per day requirement or a non-per capita program requirement established in the management plan in effect on the date of application for the Pinal Active Management Area:~~

~~a. Determine the applicant's service area population for the calendar year; and~~

~~b. Multiply the population determined in subsection (H)(4)(a) by the product of 125~~

gallons per capita per day and the number of days in the calendar year.

5. ~~If the applicant is a designation of AWS applicant that is an existing municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application for the Pinal Active Management Area, the largest volume of groundwater withdrawn by the applicant within the active management area in any one calendar year, from calendar year 1980 through calendar year 1989.~~
6. ~~If the applicant is a designation of AWS applicant that is a new municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application for the Pinal Active Management Area:~~
  - a. ~~Determine the applicant's service area population for the calendar year; and~~
  - b. ~~Multiply the population determined in subsection (H)(6)(a) by the product of 62.5 gallons per capita per day and the number of days in the calendar year.~~
- I. ~~If a municipal provider that is not a deemed provider in the Phoenix, Tucson, or Pinal Active Management Areas files an application within 180 days after the effective date of this Article as required by R12-15-702(D), the Director shall determine that the proposed use of the applicant is consistent with the management goal of the active management area for calendar years 1996, 1997, and 1998, regardless of the volume of groundwater withdrawn by the applicant within the active management area. Beginning calendar year 1999, the applicant shall comply with the provisions of this Section.~~
- J. ~~If a municipal provider that is a deemed provider files an application to be designated on or before January 1, 1997, the Director shall determine that the proposed use of the applicant is~~

consistent with the management goal for the calendar years 1998, 1999, and 2000, regardless of the volume of groundwater withdrawn by the applicant within the active management area. Beginning calendar year 2001, the applicant shall comply with the provisions of this Section.

~~K. After the Director issues a designation of assured water supply to a municipal provider in the Tucson or Phoenix Active Management Area, the Director shall, before the beginning of each calendar year, add a volume of groundwater to the volume calculated for the applicant in subsection (G) to determine whether the use of the provider is consistent with the achievement of the management goal of the active management area. The Director shall calculate the volume of groundwater by multiplying the provider's total water use, from any source, in the previous calendar year, by the standard incidental recharge factor of 4 percent. The Director may establish a different incidental recharge factor for the provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge, expected to be attributable to the municipal provider during the management period, to the average annual amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period is different than 4 percent. If a provider applies for a variance from the standard incidental recharge factor, the provider shall do so in a manner consistent with A.R.S. § 45-565.01(D)(1).~~

~~L. The Director shall establish an assured water supply credit for the extinguishment of a grandfathered groundwater right if all of the following conditions are met:~~

- ~~1. The owner of the right submits to the Director a notarized statement of intent to extinguish the grandfathered groundwater right.~~

- ~~2. The certificate evidencing the grandfathered groundwater right is returned to the Director or the Director receives an affidavit evidencing that the certificate has been lost. If only a portion of a type 1, non-irrigation grandfathered right or irrigation grandfathered right is extinguished, the Director shall issue a new certificate for the remainder of the right.~~
- ~~3. If the right being extinguished is a type 1, non-irrigation grandfathered right or an irrigation grandfathered right, the owner of the right submits sufficient evidence of ownership of the land associated with the grandfathered groundwater right.~~
- ~~4. If the grandfathered groundwater right is located in the Prescott Active Management Area, all of the following conditions are met:~~
  - ~~a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town, or county before August 21, 1998.~~
  - ~~b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998.~~
  - ~~c. The land to which the right is appurtenant has not been physically developed for industrial, commercial, or other non-irrigation use.~~

~~M. The amount of the assured water supply credit established for extinguishing a grandfathered right is as follows:~~

- ~~1. For the extinguishment of an irrigation grandfathered right, or a portion of an irrigation grandfathered right in the Phoenix or Tucson Active Management Area, the amount calculated by multiplying 1.5 acre feet per acre by the number of irrigation acres associated with the extinguished right and multiplying the product by the difference~~

~~calculated by subtracting the calendar year of extinguishment from 2025. If only a portion of an irrigation grandfathered right is extinguished, only those irrigation acres associated with the portion of the right that is extinguished shall be included in the calculation.~~

- ~~2. For the extinguishment of an irrigation grandfathered right in the Pinal Active Management Area, after the right or a portion of the right is extinguished, add annually the product of 3.0 acre feet per acre multiplied by the number of irrigation acres associated with the extinguished right in each calendar year before 2000, and the product of 1.5 acre feet per acre multiplied by the number of irrigation acres associated with the extinguished right for each calendar year thereafter. If only a portion of an irrigation grandfathered right is extinguished, only those irrigation acres associated with the portion of the right that is extinguished shall be included in the calculation.~~
- ~~3. For the extinguishment of a type 1, non-irrigation grandfathered right or a portion of the non-irrigation grandfathered right extinguished in the Phoenix or Tucson Active Management Area, the amount calculated by:
  - ~~a. Subtracting the calendar year of extinguishment from 2025.~~
  - ~~b. Multiplying 1.5 acre feet per acre by the number of acres to which the type 1, non-irrigation grandfathered right is appurtenant.~~
  - ~~c. Multiplying the product calculated in subsection (M)(3)(b) by the difference calculated in subsection (M)(3)(a).~~~~
- ~~4. For the extinguishment of a type 1, non-irrigation grandfathered right or a portion of the non-irrigation grandfathered right in the Pinal Active Management Area, the amount calculated annually by multiplying 1.5 acre feet per acre by the number of acres to which~~



~~the type 1 non irrigation right is appurtenant. If only a portion of the type 1 non irrigation right is extinguished, only those acres associated with the portion of the right that is extinguished shall be included in the calculation.~~

- ~~5. For the extinguishment of a type 2, non irrigation grandfathered right in the Prescott, Phoenix, or Tucson Active Management Area, the amount calculated by multiplying the number of acre feet indicated on the certificate by the difference between the calendar year of extinguishment and 2025.~~
- ~~6. For the extinguishment of a type 2, non irrigation grandfathered right in the Pinal Active Management Area, an annual amount equal to the number of acre feet indicated on the certificate.~~
- ~~7. For the extinguishment of an irrigation grandfathered right or a type 1 non irrigation grandfathered right in the Prescott Active Management Area:
  - ~~a. Through December 31, 2010:
    - ~~i. If the irrigation acres associated with the extinguished right were irrigated for at least four of the six calendar years preceding January 1, 2000, the amount calculated by multiplying 1.5 acre feet per acre by the number of irrigation acres associated with the extinguished right and multiplying that product by 25.~~
    - ~~ii. If the irrigation acres associated with the extinguished right were not irrigated for at least four of the six calendar years preceding January 1, 2000, the amount calculated by multiplying 1.5 acre feet per acre by the number of irrigation acres associated with the extinguished right and multiplying the product by the difference calculated by subtracting the calendar year in which the statement of intent to extinguish is filed from 2025.~~~~~~

~~b. After December 31, 2010, the amount calculated by multiplying 1.5 acre feet per acre by the number of irrigation acres associated with the extinguished right and multiplying the product by the difference calculated by subtracting the calendar year in which the statement of intent to extinguish is filed from 2025.~~

~~N. A municipal provider that receives credits for the extinguishment of a grandfathered groundwater right may convey the credits. The holder of a certificate may not convey credits obtained for the extinguishment of a grandfathered groundwater right unless the credits are conveyed as part of the transfer of the certificate to which they have been applied.~~

~~O. If an irrigation grandfathered right that is extinguished has a debit balance in its flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the assured water supply credit calculated in subsection (M).~~

~~P. The Director shall not give any assured water supply credit for the extinguishment of a type 1, non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson Active Management Area in the determination made under A.R.S. § 45-463(F) nor to the holder of a type 1, non-irrigation grandfathered right who the Director determines is likely to continue to receive groundwater from an undesignated municipal provider pursuant to its service area right or pursuant to a groundwater withdrawal permit. The Director shall not give any assured water supply credit for the extinguishment of a type 2, non-irrigation grandfathered right that was issued for the purpose of allowing mineral extraction or the generation of electrical power.~~

~~Q. The volume of groundwater that the Director determines may be used by a person consistent with the achievement of the management goal of the active management area pursuant to subsection (F), (G), (K), or (M) may be used by the person in any calendar year.~~

~~R. To determine compliance with the consistency with management goal requirements of this Section for the Prescott, Phoenix, or Tucson Active Management Areas, the Director shall maintain an account, updated annually, of the water supply and demand status for each holder of a certificate of assured water supply and each holder of a designation of assured water supply. The Director shall subtract annually the volume of groundwater, except for groundwater excluded under subsection (T), that is withdrawn from within the applicable active management area and used by the holder of the certificate or designation, from the volume of groundwater that the Director determines under subsections (F), (G), (K), and (M) that the holder of the certificate or designation may withdraw from within the active management area and use consistent with the achievement of the management goal of the active management area. The Director shall determine that the use of a holder of a certificate or a designation is not consistent with the management goal of the active management area if the holder of the certificate or the designation has used more groundwater withdrawn from within the active management area than the volume that the Director has determined the holder may use consistent with the achievement of the management goal for the active management area.~~

~~S. To determine compliance with the consistency with management goal requirement of this Section for the Pinal Active Management Area:~~

- ~~1. The Director shall maintain an account, updated annually, of the groundwater supply and demand status for each holder of a certificate of assured water supply and each holder of a designation of assured water supply. After the Director calculates under subsection (H) the volume of groundwater that the holder of the certificate or designation may withdraw within the active management area and use for a calendar year consistent with the~~

~~management goal of the active management area, the Director shall determine compliance with this Section by determining the volume of groundwater withdrawn from within the active management area that is used by the applicant during the calendar year.~~

~~2. The Director shall determine that the holder of a certificate or designation is not consistent with the management goal of the active management area if the holder of the certificate or the designation has used more groundwater withdrawn within the active management area during the calendar year than the maximum annual allotment of groundwater that the Director has determined the holder may use consistent with the achievement of the management goal for the active management area for the calendar year.~~

~~3. If the Director determines that the holder of a certificate or designation uses less groundwater withdrawn from within the active management area in any calendar year than the maximum annual allotment of groundwater established for the holder for that calendar year, the Director shall add to the next calendar year's groundwater allotment the amount calculated by subtracting the volume of groundwater used in the calendar year from the maximum groundwater allotment for the calendar year.~~

~~T. For a holder of a certificate or designation, the Director, upon application, shall exclude the following volumes of groundwater, withdrawn within the applicable active management area and used by the holder, to determine under subsections (R) and (S) whether the holder's use continues to be consistent with the achievement of the management goal for the active management area:~~

~~1. If the Director determines that a surface water supply is physically available to the holder under R12-15-703 and the volume of the supply actually available to the holder during a~~

~~calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater that is accounted for under subsections (R) or (S), withdrawn within the active management area that, when combined with the holder's available surface water supply, is equal to or less than the holder's drought volume.~~

~~2. The volume of groundwater withdrawn from within the active management area to which all of the following apply:~~

~~a. The Director receives a written determination from the Director of the Arizona Department of Environmental Quality, stating that the quality of the groundwater pumped or exchanged fails to meet state aquifer water quality standards, the groundwater is a threat to future drinking water supplies, and the removal and use of the contaminated groundwater is an appropriate remedial action.~~

~~b. The groundwater pumped has either been treated or blended to achieve the water quality standards or exchanged for other water supplies that achieve such standards.~~

~~c. The groundwater would not have otherwise been removed from the aquifer, or the withdrawal of the groundwater will accelerate the treatment of groundwater at a designated state or federal groundwater clean up site.~~

~~d. The groundwater was withdrawn before the end of calendar year 2025.~~

~~3. Any volume of groundwater withdrawn within a portion of an active management area that is exempt from conservation requirements under A.R.S. Title 45 due to waterlogging. The Director shall review the application of this exclusion on a periodic basis, not to exceed 15 years.~~

~~U. For the purpose of performing the calculations prescribed in this Section, the Director shall evaluate an application for a designation of assured water supply, filed by a city or town that~~

~~is deemed to have an assured water supply under A.R.S. § 45-576(E), in the same manner as any other municipal provider.~~

~~V. An applicant for a dry lot subdivision comprised of 20 or fewer lots is exempt from the requirements of this Section.~~

A. The certificate holder of a Type A certificate and the assignee may apply for approval of an assignment of the Type A certificate within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the fee required by R12-15-730, and the applicant shall provide the following:

1. One of the following forms of proof of ownership for each assignee:

a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or

b. If the assignee is a potential purchaser, evidence of a purchase agreement;

2. A current plat of the subdivision;

3. An estimate of the 100-year water demand for the subdivision, based on the current plat;

4. Certification by each applicant that:

a. The proposed municipal provider has not changed and has agreed to continue to serve the subdivision after the assignment; and

b. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment.

- B. Each applicant shall sign the application for an assignment of a Type A certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land included in the certificate, the authorized representative may sign the application on behalf of the applicant.
- C. Upon receiving an application for an assignment of a Type A certificate, the Director shall post the notice required by A.R.S. § 45-579(E).
- D. If the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type A certificate to each applicant. A Type A certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (E) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:
1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
  2. The assignee is the owner or a potential purchaser of the portion of the subdivision that is the subject of the assignment;
  3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
  4. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and

5. The applicant makes the certifications required in subsection (A)(4) of this Section.

E. In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type A certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type A certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate being assigned.

F. The Director shall review an application for an assignment of a Type A certificate of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

**~~R12-15-706. Assured Water Supply Requirement — Consistency with Management Plan~~**

**Assignment of Type B Certificate of Assured Water Supply**

~~A. The director shall approve an application for a certificate of assured water supply or a designation of assured water supply only if the applicant's projected groundwater use is consistent with the management plan as determined at the date of application for the applicable active management area. The director shall determine that an applicant's projected groundwater use is consistent with the management plan only if the applicant submits a water supply plan which satisfies the requirements of this Section.~~

~~B. The director shall determine that a designation of AWS applicant which is providing water to customers as of the date of application satisfies the requirements of this Section if the~~



director determines that either:

1. ~~The applicant is in compliance with its applicable management plan requirements in the most recent calendar year for which data is available prior to the date of application; or~~
2. ~~If the applicant has signed a stipulation and consent order which is in effect on the date of the application or which becomes effective during the time of review of the application to remedy non-compliance with the management plan requirements, that the applicant is in compliance with the terms of the stipulation and consent order.~~

~~C. The director shall determine that a designation of AWS applicant that has not commenced serving water to customers as of the date of application satisfies the requirements of this Section if the applicant submits a water supply plan which demonstrates to the director that compliance with management plan requirements will be achieved through the use of conservation or augmentation measures.~~

~~D. The director shall determine that a certificate applicant for a development of more than 50 lots satisfies the requirements of this Section if the applicant presents a water supply plan to the director indicating that compliance with management plan requirements will be achieved through the use of conservation or augmentation measures. The plan shall be specific enough to allow the director to calculate the water requirements per lot and for non-residential areas and common areas. The applicant shall also submit an analysis of the effect of the applicant's water use on the applicant's municipal provider's ability to comply with applicable management plan requirements.~~

~~E. The director shall determine that a certificate applicant that proposes to be served by a municipal provider which is not in compliance with its management plan requirements and has not signed a stipulation and consent order to remedy its non-compliance is consistent~~

~~with the management plan only if the director determines that the certificate applicant's water supply plan is consistent with the proposed provider's applicable management plan requirements.~~

~~F. A certificate applicant for a development of 50 or fewer lots is exempt from the requirements of this rule.~~

~~G. The director may revoke the designation of a municipal provider if the provider's management plan requirements have been violated in two or more consecutive calendar years, and the provider either fails to amend its water supply plan in a manner which the director determines will rectify the non-compliance or fails to sign a stipulated agreement to remedy the violation.~~

~~H. If a designation of AWS applicant which is serving water on the date of application has a request for an administrative review of or variance from its management plan requirements pending on the date of application, the director shall not make a finding regarding compliance with this Section until the Director has issued a final decision and order on the request or the request has been settled.~~

A. The certificate holder of a Type B certificate or a certificate issued before the effective date of this Section that has not been classified pursuant to R12-15-707 and the assignee may apply for approval of an assignment of the certificate to another person within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the fee required by R12-15-730, and the applicant shall provide the following:

1. One of the following forms of proof of ownership for each assignee:

a. A title report, condition of title report, limited search title report, or recorded deed,

- dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or
- b. If the assignee is a potential purchaser, evidence of a purchase agreement;
2. A current plat of the subdivision;
  3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
  4. Evidence that all necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
  5. Evidence that the assignee has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
  6. Evidence that all water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
  7. Evidence that the proposed municipal provider has not changed and has agreed to serve the subdivision after the assignment;
  8. If the applicant requests that the Director classify the certificate pursuant to subsection (E) of this Section, evidence that the requirements of R12-15-704(H)(1) are satisfied;
  9. Any other information that the Director reasonably deems necessary to determine whether the application meets the criteria of A.R.S. § 45-579.
- B. Each applicant shall sign the application for an assignment of a certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated**

within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.

C. Upon receiving an application for an assignment, the Director shall post the notice required by A.R.S. § 45-579(E).

D. Except as provided in subsection (E) of this Section, if the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type B certificate to each applicant. A Type B certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (F) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:

1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
2. The assignee is the owner or potential purchaser of the portion of the subdivision that is the subject of the assignment;
3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
4. The applicant demonstrates the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
5. All necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
6. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;

7. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and

8. The proposed municipal provider has agreed to serve the subdivision after the assignment.

E. The applicant may include in the application a request to classify the certificate as a Type A certificate. If the Director determines that the request meets the requirements of R12-15-704(H)(1), the Director shall classify the certificate as a Type A certificate.

F. In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type B certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type B certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate that is being assigned.

G. The Director shall review an application for an assignment of a Type B certificate pursuant to the licensing time-frame provisions in R12-15-401.

**R12-15-707. Assured Water Supply Requirement — Financial Capability Application for Classification of a Type A Certificate**

~~A. The director shall approve an application for a certificate of assured water supply or a~~

~~designation of assured water supply only if the applicant submits information from which the director determines that the applicant has the financial capability to construct the delivery system and any treatment and storage works required for the proposed use.~~

~~**B.** The director shall determine that an applicant for a certificate of assured water supply satisfies subsection (A) of this Section with respect to the construction of the requisite delivery system, if the director finds either:~~

~~1. That the applicable platting authority has determined that the applicant satisfies the platting authority's standards for financial capability to construct the requisite water utilities established pursuant to A.R.S. §§ 9-463.01(C)(8) or 11-806.01(G), and that the platting authority's standards ensure financial capability for assured water supply purposes;~~

~~2. That the applicant has constructed the requisite distribution works.~~

~~**C.** The director shall determine that an applicant for a certificate of assured water supply satisfies subsection (A) of this Section with respect to the construction of any necessary treatment or storage facility if the applicant either:~~

~~1. Has posted a performance bond for the entire cost of the treatment or storage facility, or~~

~~2. Has built the treatment or storage facility, or~~

~~3. The applicant is a member land of a multi-county water conservation district.~~

~~**D.** To make a finding under subsection (B)(1) of this Section, the director shall first determine that, except for the financial capability requirement established in this Section, the applicant for a certificate of assured water supply satisfies all requirements established for certificate applicants in this Article. Upon making this determination, the director shall issue a preliminary certificate of assured water supply to the applicant, conditioned upon the platting~~

~~authority's approval of the applicant's financial capability. Upon receipt of evidence that the platting authority has determined that the applicant has sufficient financial capability to construct the requisite water utilities, and upon determining that the platting authority's determination ensures financial capability for assured water supply purposes, the director shall issue a final certificate of assured water supply to the applicant.~~

~~E. Except as provided in subsection (F) of this Section, the director shall determine that a municipal provider which is an applicant for a designation of assured water supply satisfies the requirement established in subsection (A) of this Section if the provider either:~~

- ~~1. Has constructed all necessary treatment works and storage facilities,~~
- ~~2. Has received approval from the Arizona Corporation Commission for the financing of the construction of the requisite treatment and storage facilities, or~~
- ~~3. Is a member service area of a multi-county water conservation district.~~

~~F. Where the applicant for a designation is a city or town, the director shall determine that the applicant satisfies the requirement established in subsection (A) of this Section if the director receives evidence that the city or town either:~~

- ~~1. Has built the requisite treatment and storage facilities,~~
- ~~2. Has adopted a five-year capital improvement plan which envisions the construction of the necessary facilities and the director receives a signed statement from the chief financial officer of the city or town certifying that finances are available to implement that portion of the five-year plan pertaining to treatment and storage facilities, or~~
- ~~3. Is a member service area of a multi-county water conservation district.~~

A. A holder of a Type B certificate or a certificate issued before the effective date of this Section may apply to the Director to classify the certificate as a Type A certificate by

submitting an application on a form prescribed by the Director with the fee prescribed in R12-15-730 and attaching evidence that the certificate meets the requirements of R12-15-704(H)(1).

**B.** At least one certificate holder shall sign the application for classification of a certificate as a Type A certificate. If the applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on behalf of the applicant.

**C.** If the applicant demonstrates that the requirements of R12-15-704(H)(1) are met, the Director shall classify the certificate as a Type A certificate and issue a Type A certificate to each certificate holder.

**~~R12-15-708. Assured Water Supply Requirement — Ownership Interest; Change in Ownership~~ Material Plat Change; Application for Review**

**A.** ~~A certificate of assured water supply or designation of assured water supply issued by the director shall be in the name of the owner of the development or municipal provider for which the application was filed.~~

**B.** ~~A certificate of assured water supply may not be transferred from one owner of a development to a subsequent owner, but a subsequent owner may obtain a new certificate for the development if the subsequent owner satisfies the requirements of this Section.~~

**C.** ~~If a person applies for a new certificate of assured water supply for a development and~~



~~notifies the director in writing of the change in ownership of the development within 90 days after the change of ownership, the director shall issue the new certificate if the new owner of the development satisfies:~~

- ~~1. Financial capability requirements for the construction of the distribution, storage, and treatment facilities effective at the time the new owner of the development applies for the new certificate;~~
- ~~2. Any consistency with management goal requirements in effect at the time that the initial certificate was issued for the development;~~
- ~~3. The water quality requirements in effect at the time the new owner of the development applies for the new certificate;~~
- ~~4. The physical availability requirements in effect at the time that the initial certificate was issued for the development, except that, where the water supply proposed is a supply other than groundwater, the new owner of the development must satisfy the requirements in effect at the time that the new owner applies for the new certificate; and~~
- ~~5. The consistency with management plan requirements in effect at the time that the new owner of the development applies for the new certificate.~~

~~**D.** If the new owner of a development fails to notify the director within 90 days of obtaining ownership of the development, an application for a certificate for the development shall be reviewed under requirements in effect at the time the new owner files its application.~~

**A.** A certificate or a water report is applicable to the original plat for which the certificate or water report was issued and to a revised plat, unless the plat changes are material according to subsections (C) and (D) of this Section.

**B.** If a plat is revised after the Director issues a certificate or a water report and the changes to

the plat are material according to subsection (C) or (D) of this Section, the holder may:

1. Apply for a new certificate or water report for the revised plat,
2. Use the original plat for which the certificate or water report was issued, or
3. Revise the plat so that any changes are not material according to subsections (C) and (D) of this Section.

C. Changes to the plat for which a certificate or a water report has been issued are material if any of the following apply:

1. The number of lots on the plat has increased by more than:
  - a. For subdivisions of 6 to 10 lots: one lot;
  - b. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
  - c. For subdivisions of 500 lots or more: 50 lots.
2. The 100-year water demand for the revised plat exceeds the estimated water demand for the certificate, unless all of the following apply:
  - a. The 100-year water demand for the revised plat does not exceed the estimated water demand for the certificate by more than 10%, rounding to the nearest whole acre-foot, or by more than 25 acre-feet per year, whichever is less;
  - b. The 100-year water demand is not greater than the supply demonstrated to be physically, continuously, and legally available at the time of issuance of the certificate or water report, and that water supply remains physically, continuously, and legally available; and
  - c. For a certificate, one of the following applies:
    - i. The subdivision is enrolled as a member land in the CAGRD;
    - ii. Groundwater is not included as a source of supply; or

- iii. The subdivision is located in the Pinal AMA and the 100-year water demand for the revised plat will not exceed the sum of the amount of the groundwater allowance and the amount of any extinguishment credits pledged to the certificate, including extinguishment credits pledged after the certificate was issued.
3. For a certificate, additional land is included in the plat, unless all of the following apply:
- a. The land included in the original plat for which the certificate was issued is located in a master-planned community;
  - b. The outer boundaries of the master-planned community have not expanded;
  - c. If the land included in the original plat for which the certificate was issued is enrolled as a member land in the CAGR, the additional land has also been enrolled in the CAGR; and
  - d. A certificate has been issued for the additional land.

**D. Changes to a portion of a plat are not material if one of the following applies:**

- 1. The changes to the portion of the plat being reviewed are not material according to subsection (C) of this Section when compared to the equivalent portion of the plat for which the certificate was issued;
- 2. The changes to the entire revised plat are not material according to subsection (C) of this Section when compared to the entire plat for which the certificate was issued; or
- 3. For a partial assignment pursuant to R12-15-705 or R12-15-706, the plat for the portion of the subdivision retained by the certificate holder could be configured so that changes to the total number of lots and the estimated water demand for the entire subdivision, including the portion under consideration, are not material according to subsection (C) of this Section. For purposes of this subsection, the Director may require the applicant to

submit evidence demonstrating whether changes to the plat are material. However, the Director shall not require the applicant to submit a plat for the retained portion of a subdivision, unless the materiality of changes to the plat cannot be determined with any other evidence.

E. A person may apply for a review of a revised plat to determine whether any changes to the plat are material as follows:

1. The applicant shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and shall attach the revised plat.
2. The Director shall review the revised plat and the plat for which the certificate or water report was originally issued to determine whether any changes are material according to the criteria in subsections (C) and (D) of this Section.
3. The Director shall issue a letter to the applicant stating whether any changes to the plat are material and identifying which changes, if any, are material. If the Director determines that the changes to the plat are not material, the Director's letter shall state that the certificate or water report is applicable to the revised plat.

**~~R12-15-709. Assured Water Supply Requirement -- Review; Modification; Revocation;~~**  
**~~Prohibition on Transfer of Groundwater Allocation~~ Certificate of Assured**  
**Water Supply; Revocation**

~~A. The director may review a certificate of assured water supply and may review or modify a designation of assured water supply at any time for good cause and may revoke a certificate or designation when an assured water supply no longer exists. Good cause shall include a merger, division of the holder of a designation of assured water supply, or a change in ownership for the holder. A subsequent owner of a designated provider shall notify the~~

~~Director within 90 days of the change in ownership. The director shall review a designation of assured water supply at least every 15 years following the issuance of the designation to determine whether the designation should be modified or revoked.~~

~~**B.** With respect to revocation, the standard of review for a certificate of assured water supply shall be the standards in place at the time that the original certificate was applied for. The standard of review for the modification or revocation of a designation of assured water supply shall be the standards in place at the time of review. For the purposes of this subsection, a failure by the holder to construct any requisite treatment facilities or storage works in a timely manner shall be deemed grounds for revocation.~~

~~**C.** The holder of a designation of assured water supply may request a modification of the designation at any time. The director shall modify a designation of assured water supply if the holder presents sufficient evidence that the holder has obtained additional water supplies which satisfy the requirements of this Article.~~

~~**D.** If the director determines that there is less water in a designated provider's account established in R12-15-703(F) than the amount required for a 100-year supply for current and committed demands and projected demand for the next two calendar years, the director shall notify the designated provider and initiate a review of the designated provider's status.~~

~~**E.** The Director shall not revoke a certificate of assured water supply if any of the residential lots associated within the plat have been sold.~~

~~**F.** If a designated provider commences service to a development for which a certificate of assured water supply had been issued, the Director shall not transfer any groundwater allocated pursuant to R12-15-705 from the holder of the certificate to the holder of the designation.~~

- A. The Director may revoke a certificate if an assured water supply does not exist.
- B. The Director shall not revoke a certificate if any of the residential lots within the plat have been sold.
- C. If the Director determines that a certificate should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10. To determine whether a certificate should be revoked, the Director shall use the standards in place at the time the original application was submitted for the certificate.

**~~R12-15-710. Assured Water Supply Requirement - Notice; Objection; Hearing; Issuance of Designation of Assured Water Supply; Revocation of Certificate of Designation of Assured Water Supply; Review~~ Designation of Assured Water Supply**

- ~~A. The procedure for issuing a designation of assured water supply, including the procedure for notice, objection, hearing, issuance, and appeal shall be the same as the procedure established for a certificate of assured water supply in A.R.S. § 45-578. Any procedural requirement shall be undertaken in the active management area where the municipal provider serves its customers.~~
- ~~B. If the director determines that a certificate of assured water supply or a designation of assured water supply should be revoked, the director shall provide for notice, a hearing, and a review process as established in Article 2 of this Chapter.~~
- A. A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and provide the following:
  - 1. The applicant's current demand;
  - 2. The applicant's committed demand;

3. The applicant's projected demand for the proposed term of the designation;
4. The proposed term of the designation, which shall not be less than two years;
5. Evidence that the criteria in subsection (E) of this Section are met; and
6. Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.

**B. An application for a designation shall be signed by:**

1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.

**C. The Director shall give public notice of an application for designation in the same manner as provided for certificates in A.R.S. § 45-578.**

**D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:**

1. The annual volume of water physically, continuously, and legally available for at least 100 years;
2. The term of the designation, which shall not be less than two years;
3. The applicant's estimated water demand;
4. The applicant's groundwater allowance; and
5. Whether the applicant has demonstrated compliance with all requirements in subsection (E) of this Section.

E. The Director shall designate the applicant as having an assured water supply if the applicant demonstrates all of the following:

1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719;
5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720;
6. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
7. Any proposed use of groundwater withdrawn within an AMA is consistent with the management goal, according to the criteria in R12-15-722.

F. The Director shall review an application for a designation of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

**R12-15-711. Assured Water Supply Requirement - Annual Reports**  
**Designation of Assured**  
**Water Supply; Annual Report Requirements, Review, Modification,**  
**Revocation**

~~Upon obtaining a designation of assured water supply, a municipal provider shall include in its annual report required pursuant to A.R.S. § 45-632 the following information for the preceding~~



calendar year:

- ~~1. The estimated future demand of platted, undeveloped lots which are located in the provider's service area.~~
- ~~2. The projected volume of water demand at build-out of customers with which the provider has entered into a notice of intent to serve agreement in the calendar year.~~
- ~~3. A report regarding the provider's compliance with water quality requirements.~~
- ~~4. The depth-to-static water level of all wells from which the provider withdrew water during the calendar year.~~
- ~~5. Any other information required to determine whether to continue a provider's designated status which is requested by the director.~~

A. A designated provider shall include in the annual report required by A.R.S. § 45-632 the following information for the preceding calendar year:

1. The designated provider's committed demand;
2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
3. A report regarding the designated provider's compliance with water quality requirements;
4. The depth-to-static water level of all wells from which the designated provider withdrew water; and
5. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of assured water supply.

B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.

- C. The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked. To determine whether the designation should be modified or revoked, the Director shall use the standards in place at the time of review.
- D. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider.
- E. A designated provider may request a modification of the designation at any time pursuant to R12-15-710.
- F. The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-710(E), than the amount required for a 100-year supply for the provider's:
    - a. Current demand,
    - b. Committed demand, and
    - c. Projected demand during the next two calendar years;
  2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner;
  3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
  4. The designated provider has violated its management plan requirements for two or more

consecutive calendar years, and one of the following applies:

- a. The provider fails to amend its water use plan in a manner that the Director determines will achieve compliance, or
- b. The provider fails to sign a stipulated agreement to remedy the violation.

G. If the Director determines that a designation of assured water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.

H. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.

I. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

**~~R12-15-712. Assured Water Supply Requirement – Unplatted Development Plan; Analysis of Assured Water Supply~~ Analysis of Adequate Water Supply**

~~A. The director shall issue a certificate of assured water supply only to a development consisting of subdivided land.~~

~~B. The director may evaluate an unplatted development plan consisting of land which is not subdivided for the purpose of determining whether the development is likely to satisfy requirements established by this Article after the development is platted and divided into subdivided land.~~

~~C. A developer proposing to develop land which is part of an unplatted development plan may~~

~~request the evaluation described in subsection (B) of this Section by submitting to the director an application for an analysis of assured water supply.~~

~~D. After determining that the information supplied in the application is complete, the director shall review the application and issue an analysis of assured water supply. If the director determines from evidence submitted in the application that the applicant would presently satisfy one or more of the assured water supply requirements in this Article if the development were comprised of platted, subdivided land, the director shall include a statement to such effect in the analysis of assured water supply.~~

~~E. If the director includes within an analysis of assured water supply a determination regarding the physical availability of water for the projected 15 year groundwater demand as calculated from the projected date of application, the director shall include the determination in any calculation of the 100 year, depth to static water level as prescribed in R12-15-703 for certificate and designation of AWS applicants.~~

~~F. If a developer proposes to subdivide a development for which an analysis of assured water supply has been issued under subsection (D) of this Section into platted, subdivided lands, the director shall presume that those requirements indicated in the analysis as being satisfied remain satisfied unless a change in the evidence supporting the director's determination has occurred since the application for the analysis was submitted. If a developer receives a certificate of assured water supply based in whole or in part on an analysis, the certificate shall incorporate any conditions established in the analysis.~~

A. A person proposing to develop land outside an AMA that will not be served by a designated provider may apply for an analysis of adequate water supply before applying for a water report. An applicant for an analysis must be the owner of the land that is the subject of the

application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona outside an AMA or may consent to the inclusion of such land in an application.

**B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the fee required by R12-15-730, and attach the following:**

**1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director, demonstrating the ownership of the land that is the subject of the application;**

**2. A description of the development, including:**

**a. A map of the land uses included in the development,**

**b. A list of water supplies proposed to be used by the development,**

**c. A summary of land use types included in the development, and**

**d. An estimate of the water demand for the land uses included in the development; and**

**3. Evidence that the applicant has complied with subsection (E) of this Section.**

**C. An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land that is the subject of the water report, the authorized representative may sign the application on the applicant's behalf.**

**D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.**

E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:

1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716;
2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717;
3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718;
4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.

F. For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:

1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1), the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
2. If an analysis holder applies for a water report for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the water report, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the water report that will be met with groundwater.

G. The Director shall reduce the amount of water considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the person's designee for purposes of this subsection.

H. The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:

1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
2. The analysis holder has made material progress in developing the land included in the analysis.
3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.

I. After the Director grants two five-year extensions pursuant to subsection (H) of this Section,

the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (H)(2), or (H)(3) of this Section.

J. The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

**~~R12-15-713. Assured and Water Supply Requirement — State Land Department/General Plan, Development Plan, Secondary Plan~~ Water Report**

~~A. The director shall not issue a certificate of assured water supply for land determined by the commissioner of the Arizona State Land Department to be urban land requiring a general plan, development plan, or secondary plan in accordance with A.R.S. §§ 37-332 and 37-334. A certificate of assured water supply shall be required of a subsequent purchaser only if the purchaser intends to plat and subdivide the land.~~

~~B. To obtain a determination that state urban land for which a state general plan has been prepared in accordance with A.R.S. § 37-332 has the quality and quantity of water needed for development, the commissioner shall apply to the director for a survey of available water supplies. The application shall include portions of the information required in R12-15-702 as required by the director. The survey of available water supplies shall contain a description of the location of the land, a description of all water supplies which may be available for use on the state urban land, an estimate of the volume of each water source which may be available for use on the state urban land, a projection of the demand of the proposed use, and a description of whether each water source satisfies existing state water quality standards.~~

~~C. To obtain a determination of whether a development or secondary plan prepared for state~~



~~urban land in accordance with A.R.S. § 37-334 provides for the delivery of an assured water supply, the commissioner shall apply for an analysis of assured water supply pursuant to the applicable provisions of R12-15-712. In the commissioner's application, the commissioner shall propose a conceptual development for the state urban land. If the director determines that an assured water supply would exist for the conceptual development proposed by the commissioner in accordance with the commissioner's development or secondary plan, the director shall issue an analysis of assured water supply to the commissioner. The director's determination shall constitute a finding that the requirements of A.R.S. § 37-334 have been satisfied.~~

~~D. If the director issues an analysis of assured water supply pursuant to subsection (C) of this Section, and a subsequent purchaser for the state land described in the analysis proposes to construct a development which satisfies the standards established in the analysis, upon application for a certificate of assured water supply, the purchaser shall receive a certificate of assured water supply without further review of the development's water use. If the development does not satisfy the standards established in the analysis, the purchaser's application for a certificate of assured water supply shall receive full review from the director.~~

~~E. If the commissioner of the State Land Department provides adequate evidence that a subsequent purchaser of state urban land will be provided water by a designated provider, the State Land Department shall be presumed to have met the applicable requirements of A.R.S. §§ 37-332 and 37-334 and shall be exempt from the provisions of this Section.~~

A. An application for a water report shall be filed by the current owner of the land that is the subject of the application.

**B. An applicant for a water report shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and provide the following:**

1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed and demonstrating that the applicant is the owner of the land that is the subject of the application;
2. A plat of the subdivision;
3. An estimate of the 100-year water demand for the subdivision;
4. A list of all proposed sources of water that will be used by the subdivision;
5. If the applicant is seeking a finding that the subdivision has an adequate water supply, evidence that the criteria in subsection (E) of this Section are met; and
6. Any other information that the Director reasonably determines is necessary to decide whether an adequate water supply exists for the subdivision.

**C. Each applicant shall sign the application for a water report. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the water report, the authorized representative may sign the application on the applicant's behalf.**

**D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:**

1. The estimated water demand of the subdivision;
2. Whether the applicant has demonstrated all of the requirements in subsection (E) of this

Section.

E. The Director shall determine that the subdivision has an adequate water supply if the applicant demonstrates all of the following:

1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
4. The proposed sources of water will be of adequate quality, according to the criteria in R12-15-719;
5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720.

F. The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection (E) of this Section.

G. The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.

H. The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection (E) of this Section. The Director shall not modify a water report pursuant to this subsection if any of the residential lots included in the plat have been sold. To determine whether a water report should be modified pursuant to this subsection, the Director shall use the standards in place at the time the original application was submitted for the water report. If the Director modifies a water report, the Director shall:

1. Provide for an administrative hearing pursuant to A.R.S. Title 41, Chapter 6, Article 10;  
and

2. Notify the Arizona Department of Real Estate.

I. An owner of land that is the subject of a water report may request a modification of the water report at any time by submitting an application in accordance with subsection (B) of this Section. To determine whether a water report should be modified pursuant to this Section, the Director shall use the standards in place at the time of review.

J. A water report is subject to the provisions of R12-15-708.

**R12-15-714. Assured Water Supply Requirement -- Fees** **Designation of Adequate Water Supply**

~~A. With respect to an application listed in subsection (B) of this Section, the director shall only accept or take action on the application upon payment of the appropriate fee as listed below. Payment may be made by cash, check, or by entry in an existing department fee credit account established pursuant to R12-15-152.~~

~~B. The following application fees shall be paid:~~

APPLICATION	FEE (\$)
<del>1. Certificate of Assured Water Supply</del>	<del>250.00 up to 20 lots; each additional lot is 0.50; maximum of 1,000.00; subtract 20% of the original fee if consistency with goal determination unnecessary; subtract 20% of the original fee if physical availability and water</del>

	quality determination unnecessary	
2. Designation of Assured Water Supply	500.00, up to 500 acre feet demand in the calendar year prior to the date of application; add 0.50 for each acre foot between 500 and 1,000; add 0.25 for each acre foot above 1,000, up to a maximum of 10,000.00; subtract 20% of the original fee if consistency with goal determination unnecessary; subtract 20% of the original fee if physical availability and water quality determination unnecessary	
3. Designation of Assured Water Supply Modification	500.00	
4. Analysis of Assured Water Supply	1,000.00	
5. Physical Availability Demonstration – Undesignated Provider	1,000.00	
6. Physical Availability	1,000.00	

Demonstration – Certificate of Assured Water Supply Applicant	
7. Survey of Available Water Supplies	500.00

A. A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and the following:

1. The applicant's current demand;
2. The applicant's committed demand;
3. The applicant's projected demand for the proposed term of the designation;
4. The proposed term of the designation, which shall not be less than two years;
5. Evidence that the criteria in subsection (E) of this Section are met; and
6. Any other information that the Director determines is necessary to decide whether an adequate water supply exists for the municipal provider.

B. A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the fee required in R12-15-730, and provide the following:

1. The current demand of the applicant's service area;
2. The committed demand of the applicant's service area;
3. The projected demand of the applicant's service area for the proposed term of the designation;

4. The proposed term of the designation, which shall not be less than two years; and
5. Evidence that the requirements in A.R.S. § 45-108(D) are met.

C. An application for a designation shall be signed by:

1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.

D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:

1. The annual volume of water that is physically, continuously, and legally available for at least 100 years;
2. The term of the designation, which shall not be less than two years;
3. The estimated water demand for the applicant's service area for 100 years; and
4. Whether the applicant has demonstrated compliance with all requirements in subsection (E) or (F) of this Section.

E. The Director shall designate the applicant has having an adequate water supply pursuant to subsection (A) of this Section if the applicant demonstrates all of the following:

1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;

3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;

4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719; and

5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720.

F. The Director shall issue a designation pursuant to subsection (B) of this Section if the applicant demonstrates that the requirements of A.R.S. § 45-108(D) are met.

G. The Director shall review an application for a designation of adequate water supply pursuant to the licensing time-frame provisions in R12-15-401.

**R12-15-715. Definitions — Adequate Water Supply Program Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation**

~~In addition to any word or phrase defined or incorporated by reference in R12-15-701, the following words and phrases in R12-15-716 through R12-15-725 shall have the following meanings, unless the context otherwise requires:~~

~~1. "AADWS applicant" means an applicant for an analysis of adequate water supply.~~

~~2. "Adequacy water report applicant" means an applicant for a water report or the applicant's proposed municipal provider.~~

~~3. "Analysis of adequate water supply" means an instrument prepared by the director in accordance with R12-15-723.~~

~~4. "Designated provider" means a municipal provider which has obtained a designation of adequate water supply.~~



5. ~~“Designation of ADWS applicant” means a person applying for a designation of adequacy.~~

6. ~~“Designation of adequate water supply” means a decision and order issued by the director designating a municipal provider as having an adequate water supply pursuant to A.R.S. § 45-108 and this Article.~~

7. ~~“Water report” means a report prepared by the director pursuant to A.R.S. § 45-108 describing the adequacy of the water supply for a development.~~

A. By March 31 of each calendar year, a designated provider shall submit the following information for the preceding calendar year on a form provided by the Director:

1. The designated provider’s committed demand;

2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;

3. A report regarding the designated provider’s compliance with water quality requirements;

4. The depth-to static water level of all wells from which the designated provider withdrew water;

5. A report regarding volume of water withdrawn, diverted, or received from each source for delivery to customers.

6. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of adequate water supply.

B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.

C. The Director shall review a designation at least every 15 years following issuance of the

designation to determine whether the designation should be modified or revoked.

**D. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. A designated provider may request a modification of the designation at any time pursuant to R12-15-714. To determine whether the designation should be modified, the Director shall use the standards in place at the time of review.**

**E. The Director may revoke a designation if:**

- 1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-714(E), than the amount required for a 100-year supply for the provider's:**
  - a. Current demand,**
  - b. Committed demand, and**
  - c. Projected demand for the next two calendar years;**
- 2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner; or**
- 3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance.**

**F. To determine whether the designation should be revoked, the Director shall use the standards in place at the time of review. If the Director determines that a designation of adequate water supply should be revoked, the Director shall provide for an administrative hearing, in**

accordance with A.R.S. Title 41, Chapter 6, Article 10.

G. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.

H. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

**~~R12-15-716. Adequate Water Supply Requirement — Application for Water Report;~~**  
**~~Application for Designation of Adequate Water Supply; Application for~~**  
**~~Analysis of Adequate Water Supply~~ Physical Availability**

~~A. A person applying for a water report, a designation of adequate water supply, or an analysis of adequate water supply shall provide the following information on a form prescribed by the director:~~

~~1. For an application for a water report or an analysis of adequate water supply:~~

~~a. Name, telephone number, and address of the water report applicant or AADWS applicant. The applicant must be the owner of the subdivision for which the application is filed. If the holder of an ownership interest in the proposed development is a person other than an individual, such as a corporation, partnership, or trust, a statement naming the type of legal entity and listing the interest and extent of such interest of each principal in the entity. For purposes of this subsection (A)(1)(a), "principal" means any person or entity having a 10% or more financial interest in the development or, if the legal entity is a trust, each beneficiary of the trust holding a 10% or more beneficial interest in the development;~~

- b. ~~Name of the proposed development;~~
- c. ~~Name, address, and telephone number of the municipal provider proposed to serve the development and the applicant's technical consultant;~~
- d. ~~Number of lots or housing units projected to be located within the proposed development;~~
- e. ~~A copy of the proposed development's plat which will be submitted to the city, town, or county for approval or unplatted development plan, and a map of the proposed development which indicates the location of the proposed water distribution system and treatment works and the proposed development's geographical coordinates;~~
- f. ~~Total acreage of and size of lots in the proposed development;—~~
- g. ~~The anticipated schedule for the proposed development to reach build out and an annual projection of water demand until build out;~~
- h. ~~Proposed water uses of the proposed development;~~
- i. ~~Projected annual water demand per lot or housing unit within the proposed development at build out for the following categories, and a schedule for completion of facilities associated with each category:~~
  - i. ~~Single family housing units,~~
  - ii. ~~Multifamily housing units,~~
  - iii. ~~Non residential uses,~~
  - iv. ~~Other uses which impact the projected annual water demand;~~
- j. ~~Information required to project annual lost and unaccounted for water associated with the proposed development;~~
- k. ~~Projected average number of persons per household for the proposed development for~~

the following categories:

- ~~i. Single family housing units;~~
- ~~ii. Multifamily housing units;~~
- ~~l. Method of distributing water to the proposed development;~~
- ~~m. A study indicating that the adequacy water report applicant's or AADWS applicant's proposed sources of water meet the requirements established in R12-15-717 and R12-15-718. If wells proposed to provide water to the development are located within one mile of a Water Quality Assurance Revolving Fund or Superfund site, or if the water supply does not currently satisfy aquifer water quality standards, the study shall include:~~
  - ~~i. An identification of groundwater, if any, that does not meet state aquifer water quality standards within or adjacent to the wells proposed to provide water to the development;~~
  - ~~ii. An analysis of the possible migration of groundwater that does not meet state aquifer water quality standards which may result from the proposed use;~~
- ~~n. A copy of a notice of intent to serve agreement entered into between the owner of the proposed development and a municipal provider which is proposed to serve the proposed development;~~
- ~~o. A copy of any agreement for the delivery of specific sources of water to the proposed development;~~
- ~~p. Evidence, consistent with the requirements established in R12-15-717, of any legal right to use the proposed sources of water for the proposed development;~~
- ~~q. If the municipal provider proposed to serve the proposed development is a private~~

- ~~water company, evidence of the proposed municipal provider's certificate of convenience and necessity as approved by the Arizona Corporation Commission;~~
- ~~r. A drought response plan, if required under R12-15-717.~~
- ~~2. For an application for a designation of adequate water supply, as applicable:~~
- ~~a. Name of the designation of ADWS applicant. The applicant must be the owner of the municipal provider. If the holder of any ownership interest in the applicant is a person other than an individual, city, or town such as a corporation, partnership, or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity;~~
- ~~b. Address and telephone number of the designation of ADWS applicant and contact person;~~
- ~~c. A copy of the designation of ADWS applicant's current service area map which includes the designation of ADWS applicant's current and proposed distribution system, treatment works, and storage facilities to be analyzed by the director in determining continuous availability under R12-15-703(C), and the designation of ADWS applicant's geographical coordinates;~~
- ~~d. The designation of ADWS applicant's population projection for each calendar year for 20 calendar years from the date of application;~~
- ~~e. An analysis of current and committed demands for the designation of ADWS applicant;~~
- ~~f. Information required to project annual lost and unaccounted for water associated with the activities of the designation of ADWS applicant;~~
- ~~g. Projected average number of persons per household for housing units for~~

- ~~developments being served and proposed to be served by the designation of ADWS applicant for the following categories:~~
- ~~i. Single family housing units;~~
  - ~~ii. Multifamily housing units;~~
  - ~~h. A study indicating that the designation of ADWS applicant's proposed sources of water meet the requirements established in R12-15-717 and R12-15-718. If wells proposed to serve the designation of ADWS applicant's service area are located within one mile of a Water Quality Assurance Revolving Fund or Superfund site, or if the water supply does not currently satisfy aquifer water quality standards, the study shall include:~~
    - ~~i. An identification of groundwater, if any, that does not meet state aquifer water quality standards within or adjacent to the wells proposed to serve the service area;~~
    - ~~ii. An analysis of the possible migration of groundwater that does not meet state aquifer water quality standards which may result from the proposed use;~~
  - ~~i. Evidence, consistent with the requirements established in R12-15-717, of the designation of ADWS applicant's legal right to use the proposed sources of water;~~
  - ~~j. If the designation of ADWS applicant is a private water company, evidence of the applicant's certificate of convenience and necessity approved by the Arizona Corporation Commission;~~
  - ~~k. A drought response plan, if required under R12-15-717.~~
- ~~3. Any other information prescribed by the director which is necessary to make a determination of whether an adequate water supply exists for the applicant.~~

~~4. A sworn statement avowing that the information contained in the application is true and correct to the best knowledge of the adequacy water report applicant, AADWS applicant, or designation of ADWS applicant.~~

~~B. An application for a water report, a designation of adequate water supply or an analysis of adequate water supply shall be signed by:~~

~~1. The individual owner if the proposed development or private water company is owned by a sole proprietor; or~~

~~2. An authorized corporate officer, partner, or trustee if the proposed development or private water company is owned by a corporation, partnership, or trust. If the application is submitted on behalf of a corporation, the application must also include a resolution enacted by the corporation which evidences that the person signing the application is so authorized by the corporation; or~~

~~3. A city or town manager or a person in an equivalent position if the applicant is a city or town. The application shall also include a resolution of the governing body of the city or town authorizing the city or town manager to sign the application.~~

~~C. A person applying for a physical availability demonstration shall submit evidence as prescribed in subsection (A) of this Section which is required by the director to determine the physical availability under R12-15-717(B) and quality of the proposed source of water under R12-15-718. After analyzing this information, the director shall provide the applicant a written determination of the proposed source of water's physical availability and quality. The demonstration may be used by any person as evidence of the physical availability and quality of those water sources described in the demonstration.~~

~~D. Subject to the provisions of subsection (E) of this Section, the priority date of an application~~



~~for a water report, designation of adequate water supply, or analysis of adequate water supply shall be the date that a complete and correct application is filed with the Director. In the case of two or more pending, conflicting applications for a water report, designation of adequate water supply, or analysis of adequate water supply which the director determines to be complete and correct, priority shall be given to the application with the earliest priority date.~~

~~E. An application which the director determines to be complete and correct for a development for which a water report has previously been issued, or for which a plat was recorded prior to May 1, 1973, shall have priority among pending, conflicting applications according to the date on which the prior water report was issued, or the date on which the prior plat had been recorded prior to June 12, 1980, provided that:~~

- ~~1. If the development has never been determined to have an adequate or inadequate water supply, the plat which is referenced in the application has not been substantially modified since the plat was recorded.~~
- ~~2. If the development has previously been issued a water report, the plat referenced in the application has not been substantially modified since the water report was issued.~~

A. The volume of a proposed source of water that is physically available to an applicant for a determination of assured water supply or a determination of adequate water supply is the amount determined by the Director to be physically available pursuant to subsections (B) through (L) of this Section.

B. If the proposed source is groundwater, the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. Except as provided in subsection (D) of this Section, the Director shall determine that the proposed volume of groundwater will be physically available for the

proposed use if both of the following apply:

1. The groundwater will be withdrawn as follows:

- a. Except as provided in subsection (B)(1)(b) of this Section, from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.
- b. If the application is for a dry lot development, from wells that the Director determines are likely to be constructed on individual lots.

2. Except as provided in subsection (C) of this Section, the groundwater will be withdrawn from depths that do not exceed the applicable maximum 100-year depth-to-static water level according to the following:

<u>Type and location of development</u>	<u>Maximum 100-year depth-to-static water level</u>
<u>a. Developments in Phoenix, Tucson, or Prescott AMAs, except dry lot developments</u>	<u>1000 feet below land surface</u>
<u>b. Developments in Pinal AMA, except dry lot developments</u>	<u>1100 feet below land surface</u>
<u>c. Developments outside AMAs, except dry lot developments</u>	<u>1200 feet below land surface</u>
<u>d. Dry lot developments</u>	<u>400 feet below land surface</u>

3. The Director shall calculate the projected 100-year depth-to-static water level by adding the following for the area where groundwater withdrawals are proposed to occur:
- a. The depth-to-static water level on the date of application.
  - b. The projected declines caused by existing uses, using the projected decline in the 100-year depth-to-static water level during the 100-year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years before the date of application. If evidence is provided to the Director of likely changes in pumpage patterns and aquifer conditions, as opposed to those patterns and conditions occurring historically, the Director may determine projected declines using a model rather than evidence of past declines.
  - c. The projected decline in the depth-to-static water level during the 100-year period after the date of application, calculated by adding the projected decline from each of the following that are not accounted for in subsection (B)(3)(b) of this Section:
    - i. The estimated water demand of issued certificates and water reports that will be met with groundwater or stored water recovered outside the area of impact of the stored water, not including the demand of subdivided lots included in abandoned plats;
    - ii. The estimated water demand of designations that will be met with groundwater or stored water recovered outside the area of impact of the stored water; and
    - iii. The groundwater reserved for developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712.

d. The projected decline in depth-to-static water level that the Director projects will result from the applicant's proposed use over a 100-year period.

C. The Director shall lower the maximum 100-year depth-to-static water level requirement specified in subsection (B)(2) of this Section for an applicant seeking a determination of adequate water supply if the applicant demonstrates both of the following:

1. Groundwater is available at the lower depth; and
2. The applicant has the financial capability to obtain the groundwater at the lower depth, according to the criteria in R12-15-720.

D. If the proposed source is groundwater that will be withdrawn from a groundwater basin outside an AMA and transported into an AMA, the Director shall determine that the proposed volume of groundwater will be physically available if both of the following apply:

1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for the future uses of the applicant or the proposed municipal provider.
2. Withdrawal of the groundwater will comply with any depth-to-static water level criteria, decline rate criteria, and volume limitation criteria prescribed by statute. If there are no applicable depth-to-static water level criteria prescribed by statute, withdrawal of the groundwater shall comply with the depth-to-static water level criteria in subsection (B)(2) of this Section.

E. Subject to subsection (L) of this Section, if the proposed source of water is surface water, other than CAP water, or Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use, taking into consideration the priority date of the right or claim, by calculating 120% of the firm yield of the proposed

source at the point of diversion as limited by the capacity of the diversion works; except that if the applicant demonstrates that an alternative source of water will be physically available during times of shortage in the proposed surface water supply, the Director shall determine the annual volume of water available by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works.

The Director shall determine the firm yield or median flow as follows:

1. By calculating the firm yield or median flow at the point of diversion based on at least 20 calendar years of flow records from the point of diversion, unless 20 calendar years of records are unavailable and the Director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or
2. By calculating the firm yield or median flow at the point of diversion using a hydrologic model that projects the firm yield or median flow, taking into account at least 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years before the date of application, the Director shall require the applicant to submit evidence, as applicable, in accordance with this subsection.

F. Subject to subsection (L) of this Section, if the proposed source of water is CAP water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:

1. If the applicant or the proposed municipal provider has a non-declining, long-term municipal and industrial subcontract for CAP water, calculate 100% of the annual amount of water established in the subcontract.

2. If the applicant has a lease for Indian priority CAP water, calculate 100% of the annual amount of water established in the lease.

3. If the applicant has a subcontract for CAP water other than a non-declining, long-term municipal and industrial subcontract or a lease for Indian priority CAP water:

a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water established in the subcontract. The applicant may establish backup water supplies by one or more of the following:

i. A drought response plan;

ii. Long-term storage credits;

iii. A contract for water with a multi-county water conservation district; or

iv. Evidence of other backup supplies that are physically, continuously, and legally available.

b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (F)(3)(a) of this Section, calculate the percentage of the annual amount of water established in the subcontract that reasonably reflects the reliability of the applicant's CAP water supply.

G. Subject to subsection (L) of this Section, if the proposed source of water is Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:

1. If the priority of the contract for Colorado River water provides reliability equal to or better than CAP municipal and industrial water, calculate 100% of the annual amount of water established in the contract.

2. If the contract for Colorado River water provides reliability that is less than CAP

municipal and industrial water:

- a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water in the contract. The applicant may establish backup water supplies by one or more of the following:
  - i. A drought response plan;
  - ii. Long-term storage credits;
  - iii. A contract for water with a multi-county water conservation district; or
  - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
- b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (G)(2)(a) of this Section, calculate the percentage of the annual amount of water established in the contract that reasonably reflects the reliability of the applicant's Colorado River water supply.

H. Subject to subsection (I) of this Section, if the proposed source of water is effluent, the Director shall determine the annual volume of water that will be physically available by evaluating the current, metered production or the projected production of effluent. The volume of effluent that is physically available shall not include the following:

1. If the effluent will be delivered directly from a wastewater treatment plant, the volume of effluent that exceeds the applicant's estimated water demand that will be met with effluent; and
2. The volume of effluent that does not comply with any applicable water quality requirements for the proposed use of the effluent.

I. If the proposed source of water is stored water to be recovered from recovery wells, the

Director shall determine the volume of water that is physically available for the proposed use as follows:

1. If the stored water is represented by long-term storage credits in existence on the date of application, the amount that is physically available is the amount that may be recovered pursuant to the credits in a manner consistent with A.R.S. Title 45, Chapter 3.1, subject to subsection (I)(3) of this Section.
2. If the applicant proposes to use long-term storage credits that do not exist on the date of application or recover stored water on an annual basis pursuant to A.R.S. § 45-851.01, the Director shall evaluate the following in determining whether to include the proposed credits or the water proposed to be stored and recovered annually in the amount of water that is physically available for the applicant's proposed use:
  - a. The terms of a contract to obtain water to store in a storage facility;
  - b. The physical, continuous, and legal availability of the water proposed to be stored;
  - c. The presence of an existing storage facility that will be available for use for the proposed storage;
  - d. The existence of all required permits of an adequate duration; and
  - e. Whether recovery of the stored water will comply with subsection (I)(3) of this Section.
3. If the applicant proposes to recover the stored water from recovery wells located outside the area of impact of storage, the stored water will be considered physically available only if sufficient water exists for the withdrawals consistent with both of the following:
  - a. The maximum 100-year depth-to-static water level requirements established in subsection (B)(2) of this Section; and



b. Any criteria for the withdrawals prescribed in the management plan in effect at the time of the application.

J. If the applicant will obtain the source of water through a water exchange agreement, the Director shall determine that the water is physically available for the proposed use if the applicant submits evidence that the source of water the applicant or the applicant's customers will use will be physically available in accordance with the terms of this Section.

K. In the case of two or more pending, conflicting, complete and correct applications for determinations of assured water supply or determinations of adequate water supply, the Director shall give priority to the application with the earliest priority date. The priority date of an application for a determination of assured water supply or determination of adequate water supply shall be the date that a complete and correct application is filed with the Director. The Director shall consider an application complete and correct if it contains all the information required and the Director verifies that the information is accurate.

L. For a certificate applicant that proposes to use surface water, the Director shall determine that the proposed source is physically available only if the applicant demonstrates one of the following:

1. The land that is the subject of the application is a member land of the CAGRD.
2. The applicant has independently obtained the surface water supply.
3. The proposed municipal provider would satisfy the criteria in R12-15-722 if the municipal provider were subject to those requirements.

**~~R12-15-717. Adequate Water Supply Requirement -- Physical Availability~~ Continuous Availability**

~~A. The director shall approve an application for a water report or designation of adequate water~~

~~supply only if the director determines that the adequacy water report applicant or designation of ADWS applicant will have sufficient supplies of groundwater, surface water, or effluent which are physically available as determined under subsection (B) of this Section, continuously available as determined under subsection (C) of this Section, and legally available under subsection (D) of this Section.~~

~~**B.** The director shall determine whether the applicant will have a sufficient supply of water which will be physically available to satisfy the applicant's 100 year projected water demand, if the applicant is an adequacy water report applicant, or will exceed the applicant's current and committed demands for 100 years, if the applicant is a designation of ADWS applicant, in accordance with the following:~~

~~1. If the proposed source is groundwater:~~

~~a. The director shall determine the volume of ground water which will be available for the proposed use:~~

~~i. If the applicant is a designation of ADWS applicant, from wells owned by the applicant which are located within the applicant's service area as indicated on the current service area map on the date of application and from proposed wells which the director determines are likely to be constructed for future uses by the designation of ADWS applicant within the applicant's service area.~~

~~ii. If the applicant is an adequacy water report applicant which will be served by a central distribution system, from wells which will serve the proposed development which are located within the proposed municipal provider's service area or wells which the director determines are likely to be constructed for future uses within the service area of the proposed municipal provider.~~

- iii. ~~If the applicant is an adequacy report applicant which will not be served by a central distribution system, from wells which the director determines are likely to be constructed on individual lots.~~
- b. ~~In determining the quantity of groundwater available from each well for 100 calendar years, the applicant shall submit a hydrologic study using a method of analysis approved by the director which accurately describes the hydrology of the affected area.~~
- c. ~~The director shall consider groundwater to be physically available only if the groundwater is to be withdrawn from depths not to exceed the following 100 year, depth to static, water level criteria:~~

<del>Location of withdrawal / type of development</del>	<del>Maximum 100-year, depth to static water level</del>
<del>i. For areas outside of active management areas/developments other than dry lot developments</del>	<del>1200 feet below land surface</del>
<del>ii. For areas outside of active management areas/dry lot developments</del>	<del>400 feet below land surface</del>
<del>iii. For areas outside of active management areas/dry lot developments comprised of lots with an area between 36 and 160 acres</del>	<del>1200 feet below land surface</del>
<del>iv. For areas inside of active management areas / developments comprised of lots</del>	<del>1000 feet below land surface</del>

with an area between 36 and 160 acres	
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d. ~~The director shall determine the 100 year depth to static water level by adding:~~

i. ~~The depth to static water level present on the date of application for the area from which groundwater withdrawals are proposed.~~

ii. ~~The projected declines caused by existing demand, using the projected decline in the 100 year, depth to static water level for the area from which groundwater withdrawals are proposed to occur during the 100 year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years prior to the date of application. If evidence is provided to the director of likely changes in pumpage patterns and aquifer conditions as opposed to those patterns and conditions occurring historically, the director may determine projected declines using a model rather than evidence of past declines.~~

iii. ~~The projected decline in the depth to static water level for the area from which groundwater withdrawals are proposed to occur during the 100 year period after the date of application, calculated by adding the projected groundwater demand of items in subsections (B)(1)(d)(iii)(1), (2) and (3), and then subtracting the projected demand of item in subsection (B)(1)(d)(iii)(4):~~

~~(1) Committed demand.~~

~~(2) The projected demand included within designations of adequate water supply that is not existing demand or committed demand.~~



~~of a minimum of 20 calendar years of flow records from the point of diversion unless 20 calendar years of records are unavailable and the director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or~~

- ~~ii. By calculating the firm yield or median flow at the point of diversion using a hydrologic model which projects the firm yield or median flow taking into account a minimum of 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years prior to the date of application, the director shall require the applicant to submit evidence in accordance with this subsection (B)(2)(b)(ii).~~

~~3. If the proposed source of water is Central Arizona Project water:~~

- ~~a. If an applicant has a non-declining, long term municipal and industrial subcontract for Central Arizona Project water, the director shall calculate the quantity of water annually available for the proposed use by calculating 100% of the annual amount of water established in the subcontract.~~
- ~~b. If an applicant has a lease for Indian priority Central Arizona Project water, the director shall calculate the annual quantity of water available for the proposed use by calculating 100% of the annual amount of water established in the lease.~~
- ~~c. If an applicant has a subcontract for Central Arizona Project water other than a non-declining, long term, municipal and industrial subcontract or a lease for Indian priority Central Arizona Project water, and the applicant demonstrates a backup~~

- ~~supply of water, the director shall calculate the quantity of water annually available for the proposed use by calculating 100% of the annual amount of water established in the subcontract. The backup supply of water may be established with approval of the director by one or more of the following:~~
- ~~i. A drought response plan;~~
  - ~~ii. Recharge credits;~~
  - ~~iii. Evidence of other backup supplies which are physically, continuously, and legally available.~~
- ~~d. If the applicant does not submit evidence of sufficient backup supplies, the director shall determine the annual availability of the Central Arizona Project water supply by establishing a percentage of the annual amount established in the subcontract which the director determines to reasonably reflect the reliability of the applicant's Central Arizona Project water supply.~~
4. ~~If the proposed source of water is Colorado River water:~~
- ~~a. And the priority of the contract provides reliability equal to or better than Central Arizona Project municipal and industrial water, the director shall calculate the quantity of water annually available for the proposed use by calculating 100% of the annual amount of water established in the contract.~~
  - ~~b. And the contract provides reliability which is less than Central Arizona Project municipal and industrial water, and the applicant demonstrates a backup supply of water, the director shall calculate the quantity of water annually available for the proposed use by calculating 100% of the annual amount of water set forth in the contract. The backup supply of water may be established by one or more of the~~

following:

i. ~~A drought response plan;~~

ii. ~~Recharge credits;~~

iii. ~~Evidence of other backup supplies which are physically, continuously, and legally available.~~

c. ~~If the applicant does not submit evidence of sufficient backup supplies, the director shall determine the annual availability of the Colorado River water supply by establishing a percentage of the annual amount established in the contract which the director determines to reasonably reflect the reliability of the applicant's Colorado River water supply.~~

5. ~~If the proposed source of water is effluent which will be used directly:~~

a. ~~The director shall:~~

i. ~~Estimate the annual volume of effluent which will be available to the applicant by evaluating the current, metered production or the projected production of effluent.~~

ii. ~~Limit the annual volume of effluent calculated to be available under subsection (B)(5)(a)(i) to the applicant's projected annual demand for the direct use of the effluent.~~

b. ~~The applicant's proposed effluent use shall be in accordance with any water quality requirements established by the Arizona Department of Environmental Quality.~~

6. ~~If the proposed source of water is water to be recovered from a storage project:~~

a. ~~The director shall calculate the volume of water which will be available for 100 years as represented by credits for stored water existing on the date of application in a manner consistent with the provisions of A.R.S. Title 45, Chapter 3, Articles 1 and 3.~~



- ~~b. If the applicant proposes to use credits for stored water which do not exist at the date of application, the director shall evaluate the following in determining whether to include the proposed credits in calculating the volume of the applicant's proposed supplies:~~
- ~~i. The terms of a contract to obtain water to store in a storage project.~~
  - ~~ii. The physical availability, continuous availability, and legal availability of the water proposed to be stored or the in-lieu water, as applicable.~~
  - ~~iii. The presence of an existing storage project which will be available for use for the proposed storage.~~
  - ~~iv. The existence of all required permits of an adequate duration.~~
- ~~7. If an applicant proposes to recover stored water from outside the area of impact, sufficient water must exist for the withdrawals consistent with the depth limitations established in subsection (B)(1)(c).~~
- ~~8. If the source of water is to be obtained through a water exchange agreement, evidence that the source of water which will be used by the adequacy water report applicant or delivered to customers of a designation of ADWS applicant will be physically available in accordance with the terms of this subsection.~~
- ~~C. The director shall determine that an applicant has or will have a sufficient supply of water which will be continuously available if the applicant is an adequacy water report applicant which presents sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to satisfy the 100 year projected water demand of the applicant or the applicant is a designation of ADWS applicant which presents sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely~~

manner to exceed the applicant's current and committed demands for 100 years, and:

1. ~~If the proposed source of water is groundwater to be withdrawn by a municipal provider, wells will be constructed in a timely manner within the municipal provider's service area which:~~
  - a. ~~Are of a capacity which exceeds the applicant's current and committed demands on a continuous basis for 100 years, if the applicant is a designation of ADWS applicant.~~
  - b. ~~Are of a capacity which satisfies the applicant's 100-year projected water demand, if the applicant is an adequacy water report applicant.~~
2. ~~If the proposed source of water is surface water other than Central Arizona Project water or Colorado River water, the projected volume to be diverted from the source is perennial at the point of diversion, unless the director determines that a continuous supply will exist because of one or more of the following:~~
  - a. ~~Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands. For the purposes of this subsection (C)(2)(a) adequate storage facilities means:~~
    - i. ~~For a designation of ADWS applicant, facilities which can store enough water to exceed the applicant's current and committed demands for the duration of an anticipated shortage.~~
    - ii. ~~For an adequacy water report applicant, facilities which can store enough water to satisfy the applicant's 100-year projected water demand for the duration of an anticipated shortage.~~
  - b. ~~The applicant has presented evidence of supplies of other sources of water which the~~

- ~~director has determined will be physically, continuously, and legally available to the applicant to supplement the applicant's proposed surface water supplies.~~
- ~~c. The applicant will withdraw surface water from wells which are of a capacity:~~
- ~~i. To exceed the current and committed demands of the applicant on a continuous basis for 100 years, if the applicant is a designation of ADWS applicant.~~
- ~~ii. To satisfy the 100 year projected water demand of the applicant on a continuous basis if the applicant is an adequacy water report applicant.~~
- ~~d. The applicant has submitted a drought response plan which the director has determined will conserve an equal volume of water to the volume of water which is subject to drought.~~
- ~~3. If the proposed source of water is Central Arizona Project water, the director determines that a continuous supply will exist because of one or more of the following:~~
- ~~a. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of Central Arizona Project water is not available to meet the applicant's water demands. For the purposes of this subsection (C)(3)(a), adequate storage facilities means:~~
- ~~i. For a designation of ADWS applicant, facilities which can store enough water to exceed the applicant's current and committed demands for the duration of an anticipated shortage.~~
- ~~ii. For an adequacy water report applicant, facilities which can store enough water to satisfy the applicant's 100 year projected water demand for the duration of an anticipated shortage.~~
- ~~b. The applicant has presented evidence of supplies of other sources of water which the~~

- ~~director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed Central Arizona Project water supplies.~~
- ~~c. The applicant has submitted a drought response plan which the director has determined will conserve an equal volume of water to the volume of water which is subject to drought.~~
- ~~4. If the proposed source of water is Colorado River water, the director determines that a continuous supply will exist because of one or more of the following:~~
- ~~a. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of Colorado River water is not available to meet the applicant's water demands. For the purposes of this subsection (C)(4)(a), adequate storage facilities means:~~
- ~~i. For a designation of ADWS applicant, facilities which can store enough water to exceed the applicant's current and committed demands for the duration of an anticipated shortage.~~
- ~~ii. For an adequacy water report applicant, facilities which can store enough water to satisfy the applicant's 100 year projected water demand for the duration of an anticipated shortage.~~
- ~~b. The applicant has presented evidence of supplies of other sources of water which the director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed Colorado River water supplies.~~
- ~~c. The applicant has submitted a drought response plan which the director has determined will conserve an equal volume of water to the volume of water which is subject to drought.~~

~~5. If the proposed source of water is effluent, the applicant presents evidence that:~~

~~a. If the applicant is a designation of ADWS applicant, the applicant's ability to exceed the applicant's current and committed demands for 100 years which are to be satisfied with effluent will not be affected by fluctuations in the supply of effluent.~~

~~b. If the applicant is an adequacy water report applicant, the applicant's ability to satisfy the applicant's 100-year projected water demand which is to be satisfied with effluent will not be affected by fluctuations in the supply of effluent.~~

~~6. If the applicant will obtain the proposed source of water through a water exchange agreement, evidence that the source of water which the applicant or the applicant's customers will use will be continuously available in accordance with the provisions of this subsection.~~

~~D. The director shall determine that an applicant will have sufficient supplies of water which will be legally available to the applicant to satisfy the applicant's 100-year projected water demand, if the applicant is an adequacy water report applicant, or will exceed the applicant's current and committed demands for 100 years, if the applicant is a designation of ADWS applicant, in accordance with the following:~~

~~1. If the proposed source of water is surface water, other than Central Arizona Project water or Colorado River water:~~

~~a. The applicant shall submit the following evidence:~~

~~i. Evidence that the applicant has a certificated surface water right, decreed water right, or a pre-1919 claim for the proposed source, or evidence that the applicant is not the holder of a water right but receives water pursuant to a water right which is appurtenant to the land which is the subject of the application, providing~~

~~the water right may neither be legally withheld nor severed and transferred by the holder of the water right.~~

- ~~ii. If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre 1919 claim, evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years prior to the date of application, evidence that a court has determined that the right has not been abandoned, or evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.~~
- ~~b. And the applicant presents evidence of a certificated surface water right, a decreed water right, or a pre 1919 claim, the director shall determine that the volume of water which is legally available pursuant to the applicant's water right or claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the director shall determine the volume of water which is legally available based on the adjudicated amount of water.~~
- ~~2. If the proposed source of water is Central Arizona Project water, evidence that the applicant has entered into a subcontract with a multi-county water conservation district for the proposed volume of Central Arizona Project water. The director shall presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability to the applicant of the volume of Central Arizona Project water specified in the subcontract for 100-calendar years.~~
- ~~3. If the proposed supply of water is Colorado River water, evidence that the applicant has a contract with the United States Secretary of the Interior for the proposed supply.~~

- ~~4. If the proposed source of water is effluent, evidence that the applicant has the legal right to use, recapture, or reuse the effluent.~~
- ~~5. If the applicant will obtain the proposed source of water through a written contract other than a water exchange agreement, a contract between an adequacy water report applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation district, the director shall determine whether the proposed source of water is legally available to the applicant, the term of years for which the source is legally available, and the volume of water which is legally available as follows:~~
  - ~~a. The director shall determine that the proposed source of water is legally available to the applicant only if:~~
    - ~~i. The person providing the water under the contract has a legal right to the water in accordance with the terms of this subsection.~~
    - ~~ii. The director determines that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant.~~
  - ~~b. The director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract.~~
  - ~~c. The director shall determine the quantity of water legally available to the applicant based on the volume established in the contract.~~
- ~~6. If the applicant is an adequacy water report applicant, the applicant has submitted evidence indicating that the applicant has entered into a notice of intent to serve agreement signed by both the applicant and the municipal provider proposed to serve the applicant, which contains a statement of the municipal provider's intent to serve all of the~~

~~proposed lots and uses that are subject to this determination of an adequate water supply.~~

- ~~7. If the applicant is an adequacy water report applicant, and the municipal provider proposed to serve the applicant is a city or town, the applicant has submitted evidence indicating that the applicant is located within the incorporated limits of the city or town or the applicant has submitted evidence of the legal right of the city or town to serve water to the applicant outside the city or town's incorporated limits.~~
- ~~8. If the applicant is an adequacy water report applicant, and the municipal provider proposed to serve the applicant is a private water company, the applicant has submitted evidence:~~
  - ~~a. Of the private water company's certificate of convenience and necessity approved by the Arizona Corporation Commission. The director shall only determine that the water provided by the private water company is legally available if the certificate of convenience and necessity is free of conditions which would likely result in the revocation of the certificate of convenience and necessity; and~~
  - ~~b. That the applicant is located within the certificated area or within any other area in which the Arizona Corporation Commission authorizes the private water company to serve water.~~
- ~~9. If the applicant is a private water company applying for a designation of adequate water supply, evidence that the applicant has a certificate of convenience and necessity approved by the Arizona Corporation Commission authorizing the proposed water use.~~
- ~~10. If the applicant will obtain the proposed source of water through a water exchange agreement, evidence that the applicant's water exchange agreement satisfies the requirements of A.R.S. Title 45.~~



~~11. If the director can only determine the proposed source of water to be physically available under this Section because of the use of storage facilities by the applicant, evidence of the applicant's legal right to store water in the facilities.~~

~~E. To determine compliance with the requirements established in subsections (B), (C), and (D) of this Section, the director shall maintain a record, updated annually, of the total water supply and demand status for each holder of a water report and designation of adequate water supply.~~

~~F. The director shall make an initial determination that an adequacy water report applicant or a designation of ADWS applicant satisfies the requirements established in subsections (B), (C), and (D) of this Section if the director determines that:~~

~~1. For an adequacy water report applicant, the volume of the applicant's proposed supply of water which the director determines to be physically, continuously, and legally available in accordance with the provisions of this Section is equal to or exceeds the volume of the applicant's 100-year projected water demand.~~

~~2. For a designation of ADWS applicant, the volume of the applicant's proposed supply of water which the director determines to be physically, continuously, and legally available in accordance with the provisions of this Section exceeds the volume of the applicant's current and committed demands for 100 years.~~

~~G. To determine the volume of the supply of surface water and effluent which is physically, continuously, and legally available for an applicable period of years, the director will multiply the number of years in that period by the annual volume of those sources of water which the director determines to satisfy the requirements of this Section.~~

~~H. After the director calculates the volume of water, from any source, which a holder of the~~

~~designation of adequate water supply has proven to satisfy the requirements of this Section, the director shall annually subtract from the volume attributed to groundwater and credits for stored water the volume of groundwater and credits for stored water which the holder of the designation uses each calendar year.~~

~~I. For a holder of a designation whose designation has been modified under R12-15-720 that calendar year, the director shall add any additional volume of water, from any source, which the director determines is physically, continuously, and legally available for the proposed use.~~

~~J. The director shall determine that a holder of a designation is no longer in compliance with the requirements established in this Section if the holder of the designation no longer has a physically, continuously, and legally available volume of water, from any source which exceeds the holder's current and committed demands for 100 years.~~

A. The Director shall determine that an applicant will have sufficient supplies of water that will be continuously available for 100 years if the applicant submits sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to make the water available to the applicant or the applicant's customers for 100 years and the applicant meets any applicable requirements in subsections (B) through (G) of this Section.

B. If the proposed source of water is groundwater, the applicant shall demonstrate that wells of a sufficient capacity will be constructed in a timely manner to serve the proposed uses on a continuous basis for 100 years.

C. If the proposed source of water is surface water other than CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply will exist because of one or more of the following:

1. The projected volume to be diverted from the source is perennial at the point of diversion;
2. Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands;
3. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to supplement the applicant's proposed surface water supplies;
4. The applicant or the proposed municipal provider will withdraw surface water from wells of sufficient capacity to meet the applicant's estimated water demand on a continuous basis for 100 years; or
5. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume of water that is subject to drought.

**D. If the proposed source of water is CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply is available because of one or more of the following:**

1. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of CAP water or Colorado River water is not available to meet the applicant's water demands;
2. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed CAP water or Colorado River water supplies; or
3. The applicant has submitted a drought response plan that the Director has determined will

conserve or augment a volume of water equal to the volume subject to drought.

- E. If the proposed source of water is effluent, the applicant shall demonstrate that the capability to use the effluent to meet the demands of the proposed use will not be affected by any fluctuations in the supply of the effluent.
- F. If the proposed source of water is stored water to be recovered from recovery wells, the applicant shall demonstrate that recovery wells of a sufficient capacity will be constructed in a timely manner to serve the proposed use on a continuous basis for 100 years.
- G. If an applicant will obtain the source of water through a water exchange agreement, the applicant shall demonstrate that the source of water the applicant or the applicant's customers will use will be continuously available in accordance with the terms of this Section.

**R12-15-718. Adequate Water Supply Requirement - Water Quality Legal Availability**

- ~~A. The director shall approve an application for a water report or designation of adequate water supply only if the applicant submits information from which the director determines that the applicant's proposed water sources will satisfy existing state water quality requirements and any other water quality standards which are effective on the date of application and which are applicable to the proposed water use after any required treatment.~~
- ~~B. In making the determination described in subsection (A) of this Section, the director may consider expected changes in the quality of the proposed sources of water, including the migration of poor quality groundwater.~~
- ~~C. The director shall establish as a condition for a designation of adequate water supply that the municipal provider shall satisfy any state water quality requirements established for the applicant's proposed use after the date of designation. If the municipal provider fails to satisfy this condition, the director may terminate the designation of adequate water supply~~

after consultation with the director of the Arizona Department of Environmental Quality.

A. The Director shall determine that an applicant will have sufficient supplies of water that will be legally available for at least 100 years if the applicant submits all of the applicable information required by this Section.

B. If the applicant is an applicant for a certificate or a water report, the applicant shall submit the following, as applicable:

1. A Notice of Intent to Serve agreement between the owner of the land to be included in the subdivision and the proposed municipal provider, stating the proposed municipal provider's intent to serve the subdivision;

2. If the proposed municipal provider is a city or town, evidence indicating that the proposed subdivision is located within the incorporated limits of the city or town or evidence of the legal right of the city or town to serve water to the subdivision outside the city or town's incorporated limits; or

3. If the proposed municipal provider is a private water company, one of the following:

a. Evidence that the proposed municipal provider has a certificate of convenience and necessity approved by the Arizona Corporation Commission and the subdivision is located within the geographic area described in the certificate of convenience and necessity or any other area in which the Arizona Corporation Commission authorizes the private water company to serve water;

b. Evidence that the proposed municipal provider has an order preliminary issued by the Arizona Corporation Commission authorizing the municipal provider to provide water service and the proposed subdivision is located within the area described in the order preliminary; or

c. Evidence that the proposed municipal provider is not a public service corporation regulated by the Arizona Corporation Commission.

C. If the applicant is a private water company applying for a designation, the applicant shall submit evidence that the applicant has a certificate of convenience and necessity approved by the Arizona Corporation Commission, or has been issued an order preliminary by the Arizona Corporation Commission for a certificate of convenience and necessity, authorizing the applicant to serve the proposed use.

D. If a proposed source of water is groundwater to be withdrawn within an AMA, the applicant shall submit evidence that the applicant or the proposed municipal provider has one or more of the following:

1. A service area right;

2. An applicable non-irrigation grandfathered right to withdraw groundwater, in an amount sufficient to serve the proposed use; or

3. A pending notice of intent to establish a new service area and all of the following apply:

a. The notice of intent to establish a new service area identifies the proposed subdivision.

b. The applicant or the proposed municipal provider has obtained a permit for any wells used to establish the service area right.

c. The proposed municipal provider has obtained a water right or recovery well permit to establish the service area right, and

d. The water right is of sufficient volume and duration to meet the estimated water demand of the proposed subdivision until the anticipated date of issuance of a service area right.

E. If a proposed source of water is surface water other than CAP water or Colorado River water:

1. The applicant shall submit evidence that the applicant or the proposed municipal provider has a certificated surface water right, decreed water right, or a pre-1919 claim for the proposed source. If the applicant or the proposed municipal provider does not hold a surface water right or claim, but will receive water pursuant to a water right or claim that is appurtenant to the land that is the subject of the application, the applicant shall submit evidence of the water right or claim and evidence that the water right or claim may neither be legally withheld nor severed and transferred by the right holder or claimant.
2. If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre-1919 claim, the applicant shall submit one of the following:
  - a. Evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years before the date of application;
  - b. Evidence that a court has determined that the right has not been abandoned; or
  - c. Evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.
3. The Director shall determine that the volume of water that is legally available pursuant to a certificated surface water right, a decreed water right, or a pre-1919 claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the Director shall determine the volume of water that is legally available based on the adjudicated amount of water.

F. Subject to subsections (M) and (N) of this Section, if a proposed source of water is CAP water, the applicant shall submit evidence that the applicant or the proposed municipal

provider has entered into a subcontract with a multi-county water conservation district for the proposed volume of CAP water. The Director shall presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability of the volume of CAP water specified in the subcontract for 100 calendar years.

**G. Subject to subsections (M) and (N) of this Section, if a proposed source of water is Colorado River water, the applicant shall submit evidence of one of the following:**

1. The applicant or the proposed municipal provider has a contract with the United States Secretary of the Interior for the proposed supply; or
2. The applicant has obtained an allocation of Colorado River water from an entity to which all of the following apply:
  - a. The entity holds a contract for Colorado River water with the United States Secretary of the Interior;
  - b. The entity provides Colorado River water to the proposed municipal provider;
  - c. The entity has allocated a sufficient volume of the Colorado River water to the subdivision; and
  - d. The area that the entity may serve, described in the contract with the United States Secretary of the Interior, includes the subdivision.

**H. If a proposed source of water is effluent, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the effluent.**

**I. If the applicant will obtain a proposed source of water through a written contract other than a water exchange agreement, a contract between a certificate applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation**



district, the applicant shall submit evidence that the person providing the water under the contract has a legal right to the water in accordance with the terms of this Section and that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant or to the proposed subdivision. The Director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract. The Director shall determine the quantity of water legally available based on the volume established in the contract.

**J. If the applicant will obtain a proposed source of water through a water exchange agreement, the applicant shall submit evidence that the water exchange agreement satisfies the requirements of A.R.S. Title 45, Chapter 4.**

**K. If the Director can determine the proposed source of water to be physically and continuously available only because of the use of storage facilities by the applicant or by the proposed municipal provider, the applicant shall submit evidence of the applicant's or the proposed municipal provider's legal right to store water in the storage facilities.**

**L. If the applicant proposes to use long-term storage credits, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the credits under A.R.S. Title 45, Chapter 3.1.**

**M. If a proposed supply of water is Colorado River water or CAP water leased from an Indian community, the applicant shall submit evidence that the water leased has a priority equal to or higher than CAP municipal and industrial water, evidence that the Indian community is expressly authorized by an Act of Congress to lease the water for use off Indian community lands, evidence of the lease, and evidence of one of the following:**

**1. The proposed water supply is available under the lease for at least 100 years from any**

time during the year in which the applicant submits the application.

2. The term of the lease has less than 100 years remaining in the year in which the applicant submits the application and a supplemental water supply, together with the leased water, provides a 100-year water supply. The applicant shall demonstrate that the supplemental water supply is physically, continuously, and legally available and, if such supplemental supply is groundwater, that use of the groundwater is consistent with the management goal of the AMA. If the supplemental supply is water recovered through the use of long-term storage credits, the applicant shall also submit the following, as applicable:

a. If the applicant is to use the long-term storage credits before the beginning of the lease term, evidence that the applicant or the proposed municipal provider has obtained a recovery well permit that allows the applicant or the proposed municipal provider to recover water pursuant to the long-term storage credits; or

b. If the long-term storage credits will be accrued in the future, evidence that the applicant or the proposed municipal provider will accrue the long-term storage credits within 20 years after the effective date of the designation, certificate, or water report by storing the water under an issued water storage permit at a permitted storage facility and that no more than 20 years of the applicant's supplemental water supply will be provided by the long-term storage credits.

N. If the Director previously determined that Colorado River water or CAP water leased from an Indian community was legally available to a designated provider for 100 years, the Director shall determine that the designated provider continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease if:

1. The lease has at least 50 years remaining in its term or the lease has at least 40 years

remaining in its term and the designated provider submits evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease; and

2. One of the following applies:

- a. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
- b. Groundwater will be physically, continuously, and legally available to the designated provider at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and the projected use of groundwater is consistent with the management goal of the AMA. For purposes of this subsection, the designated provider may demonstrate that the proposed use is consistent with the management goal by entering into a written agreement with the Director under which the designated provider agrees to replace through replenishment or underground storage any groundwater used at the end of the lease term if groundwater use is not consistent with the management goal. The written agreement shall provide that specific performance is the only remedy in the event of default;
- c. A non-groundwater source of water will be physically, continuously, and legally available at the end of the lease term to substitute for the leased water for the remainder of the 100-year period; or
- d. The designated provider's governing board or council submits a resolution requesting that the designated provider be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (N)(2)(a) of this Section, to 20%, and the

Director finds that all of the following apply:

- i. No more than 20% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
- ii. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through any single lease with an Indian community; and
- iii. The designated provider does not meet the requirements of subsections (N)(2)(a), (b), or (c) of this Section.

**~~R12-15-719. Adequate Water Supply Requirement-Ownership Interest~~ Water Quality**

~~A designation of adequate water supply issued by the director shall be in the name of the owner of the municipal provider for which the application was filed. Any water report provided to the Arizona Department of Real Estate shall be in the name of the owner of the development for which the application is filed.~~

A. Except as provided in subsection (B) of this Section, when reviewing an application for a determination of assured water supply or a determination of adequate water supply, the Director shall determine that the water supply is of adequate quality if one of the following applies:

1. The applicant certifies on the application that the applicant or the proposed municipal provider will be regulated by ADEQ, or another governmental entity with equivalent jurisdiction, as a public water system pursuant to A.R.S. § 49-351, et seq., unless ADEQ, or another governmental entity with equivalent jurisdiction, has determined, after notice and an opportunity for a hearing, that the public water system is in significant

noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or

2. The applicant has submitted results of a lab analysis demonstrating that the water meets water quality requirements in accordance with A.A.C. Title 18, Chapter 4, or that the water will meet these requirements after treatment that is required by law. The lab analysis shall be based on water withdrawn from a well representative of the well or wells from which water will be withdrawn for the proposed use, conducted in compliance with sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, and completed within 60 days of the date the application is submitted to the Director. If ADEQ waives any of the water quality or sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, the Director shall not require the applicant to meet the waived requirements.

- B. If a well or a proposed well from which water will be withdrawn for the proposed use is located within one mile of a WOARF site or Superfund site, the Director shall determine that the water supply is of adequate quality only if the applicant submits a contaminant migration and mitigation analysis, demonstrating that the water supply will continue to meet the requirements in A.A.C. Title 18, Chapter 4 for 100 years. The contaminant migration and mitigation analysis may include the impact of any mitigation or treatment, including mitigation or treatment required pursuant to a consent decree.**

**~~R12-15-720. Adequate Water Supply Requirement – Review; Modification; Revocation~~**  
**Financial Capability**

- ~~A. The director may review or modify a designation of adequate water supply at any time for good cause and may revoke a designation when an adequate water supply no longer exists.~~

~~Good cause shall include a merger, division of the holder of a designation of adequate water supply, or a change in ownership of the holder. A subsequent owner of a designated provider shall notify the Director within 90 days of the change in ownership. The director shall review a designation of adequate water supply at least five years following the effective date of this Article to determine whether the designation should be modified or revoked. After the initial review, the director shall review the designated provider's status every 15 years. The standard of review for the modification or revocation shall be the standards in place at the time of the review. The director shall notify the holder of a designation of adequate water supply prior to reviewing the holder's designation.~~

~~**B.** The holder of a designation of adequate water supply may request a modification of the designation at any time. The director shall modify a designation of adequate water supply if the holder presents sufficient evidence that the holder has obtained additional water supplies which satisfy the requirements of this Article.~~

~~**C.** If the director determines that there is less water in a designated provider's account established in R12-15-717(E) than the amount required for a 100-year supply for current and committed demands and projected demands for the next two calendar years, the director shall notify the designated provider and initiate a review of the designated provider's status.~~

**A.** The Director shall determine that an applicant for a certificate or a water report has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following:

1. The applicant will submit its final plat to a qualified platting authority;
2. The applicant has constructed adequate delivery, storage, and treatment works, and water service is available to each lot; or

3. The applicant has posted a performance bond with the platting authority for the entire cost of adequate delivery, storage, and treatment works.

B. Upon receiving evidence that a platting authority has established standards for proof of financial capability to construct adequate delivery, storage, and treatment works, pursuant to A.R.S. § 9-463.01(C)(8) or A.R.S. § 11-806.01(G), the Director shall classify the platting authority as a qualified platting authority. The Director shall maintain a list of qualified platting authorities.

C. The Director shall determine that an applicant for a designation has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following for each of those facilities:

1. The applicant has constructed adequate delivery, storage, and treatment works;

2. The applicant has entered into written agreements requiring a potential developer to construct adequate delivery, storage, and treatment works;

3. If the applicant is a city or town, the applicant has:

a. Adopted a five year capital improvement plan that provides for the construction, or the commencement of construction, of adequate delivery, storage, and treatment works in a timely manner, and has submitted a certification by the applicant's chief financial officer that finances are available to implement that portion of the five-year plan; or

b. Submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner; or

4. If the applicant is a private water company, the applicant has received approval from the Arizona Corporation Commission for financing the construction of adequate delivery,

storage, and treatment works.

**~~R12-15-721 Adequate Water Supply Requirement -- Notice; Objection; Hearing; Issuance  
of Designation of Adequate Water Supply; Revocation of Designation of  
Adequate Water Supply; Review~~ Consistency with Management Plan**

- ~~A. The director may require notice and a hearing prior to approving or rejecting an application for a water report or a designation of adequate water supply. If the director determines that notice and a hearing should be held, the procedure for notice, objection, hearing, issuance, and appeal shall be the same as that established for a certificate of assured water supply in A.R.S. § 45-578. Any procedural requirement shall be performed in the county where the development is proposed to be located or where the municipal provider serves its customers.~~
- ~~B. The grounds for objection are limited to whether the water report application or the designation of adequate water supply application satisfy the criteria for determining an adequate water supply as set forth in this Article.~~
- ~~C. If the director determines that a designation of adequate water supply should be revoked, the director shall provide for notice, a hearing, and a review process as established in Article 2 of this Chapter.~~
- A. The Director shall determine whether a designation applicant's projected use of groundwater withdrawn within an active management area is consistent with the management plan as follows:
1. If the applicant is providing water to customers as of the date of application, the applicant's projected water use is consistent with the management plan if either of the following apply:
    - a. The applicant is in compliance with its applicable management plan requirements in



- the most recent calendar year for which data is available before the date of application; or
- b. The applicant has signed a stipulation and consent order that is in effect on the date of the application, or that becomes effective during the time of review of the application, to remedy non-compliance with the management plan requirements and the applicant is in compliance with the terms of the stipulation and consent order.
2. If the applicant has not commenced serving water to customers as of the date of application, the applicant shall submit a water use plan that demonstrates to the Director that compliance with management plan requirements will be achieved through the use of conservation or augmentation measures.
3. If the applicant has a pending request for an administrative review or variance from its management plan requirements, the Director shall not make a finding regarding compliance with this Section until the Director has issued a final decision and order on the request or the request has been withdrawn.
- B.** The Director shall determine that a certificate applicant's projected use of groundwater withdrawn within an AMA is consistent with the management plan if the applicant submits a water use plan for the subdivision that includes both of the following:
1. Information demonstrating that compliance with management plan requirements will be achieved through conservation or augmentation measures; and
2. All information required to calculate the water requirements for each proposed water use.
- C.** A certificate applicant for a subdivision of 50 or fewer lots is exempt from the requirements of this rule.

**R12-15-722. Adequate Water Supply Requirement -- Annual Reports Consistency with Management Goal**

~~Beginning the calendar year following the issuance of a designation of adequate water supply or, if a provider is designated on the effective date of this Article, beginning the calendar year three years subsequent to the effective date of this Article, a municipal provider shall submit to the director by March 31 of each calendar year thereafter an annual report for the preceding calendar year describing the information prescribed in R12-15-711 of this Article. In addition to this information, the provider shall submit information concerning the volume of water from each source withdrawn, diverted, or received for delivery to its customers.~~

A. For the Phoenix, Pinal, Prescott, or Tucson AMAs, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA in which the proposed use is located by adding the following:

1. The amount of the groundwater allowance, according to R12-15-724(A), R12-15-725(A), R12-15-726(A), or R12-15-727(A).
2. The amount of any extinguishment credits pledged to the certificate or designation, according to R12-15-724(B), R12-15-725(B), R12-15-726(B), or R12-15-727(B).
3. Any groundwater use that is consistent with the management goal pursuant to A.R.S. Title 45, Chapter 2.

B. If the proposed use is located in the Phoenix, Prescott, or Tucson AMA, the volume calculated in subsection (A) is the volume of groundwater that may be used, consistent with the management goal, for at least 100 years.

C. If the proposed use is located in the Pinal AMA, the volume calculated in subsection (A) is the volume of groundwater that may be used, consistent with the management goal, on an

annual basis. If in any calendar year less groundwater is used than the volume calculated in subsection (A), the Director shall add the difference to the volume calculated in subsection (A) for the following calendar year.

**D. For the Phoenix, Pinal, Prescott, or Tucson AMAs, the Director shall determine that a proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (A) of this Section is equal to or greater than:**

1. In the Phoenix, Prescott, or Tucson AMA, the portion of an applicant's estimated water demand to be met with groundwater.
2. In the Pinal AMA, the portion of an applicant's annual estimated water demand to be met with groundwater.

**E. Upon application, the following volumes of groundwater used by an applicant are considered consistent with the management goal:**

1. If the Director determines that a surface water supply is physically available under R12-15-716 and the volume of the supply actually available during a calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A) of this Section, withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.
2. Any volume of groundwater withdrawn within a portion of an AMA that is exempt from conservation requirements under A.R.S. Title 45 due to waterlogging. The Director shall review the application of this exclusion on a periodic basis, not to exceed 15 years.
3. Remedial groundwater that is consistent with the management goal according to the requirements of R12-15-729.

F. An applicant for a certificate of assured water supply for a dry lot subdivision of 20 lots or fewer is exempt from the requirements of this Section.

**~~R12-15-723. Adequate Water Supply Requirement - Master Plan Communities and Unplatted Development Plans; Analysis of Adequate Water Supply Extinguishment Credits~~**

~~A. The director shall issue a water report only to a development consisting of subdivided or unsubdivided land.~~

~~B. The director may evaluate an unplatted development plan consisting of land which is neither subdivided nor unsubdivided for the purpose of determining whether the development is likely to satisfy requirements established by this Article after the development is platted and divided into subdivided or unsubdivided land.~~

~~C. A developer proposing to develop land which is part of an unplatted development plan may request the evaluation described in subsection (B) of this Section by submitting to the director an application for an analysis of adequate water supply.~~

~~D. After determining that the information supplied in the application is complete, the director shall review the application and issue an analysis of adequate water supply. If the director determines from evidence submitted in the application that the applicant would presently satisfy one or more of the adequate water supply requirements of this Article if the development were comprised of platted, subdivided, or unsubdivided land, the director shall include a statement to such effect in the analysis of adequate water supply.~~

~~E. If the director includes within an analysis of adequate water supply a determination regarding the physical availability of water for the projected 15 year groundwater demand as calculated from the projected date of application, the director shall include the determination in any~~

~~calculation of the 100 year, depth to static water level as prescribed in R12-15-717 for adequacy water report or designation of ADWS applicants.~~

~~F. If a developer proposes to divide a development for which an analysis of adequate water supply has been issued under subsection (D) of this Section into platted, subdivided, or unsubdivided lands, the director shall presume that those requirements indicated in the analysis as being satisfied remain satisfied unless a change in the evidence supporting the director's determination has occurred since the application for the analysis was submitted.~~

A. Except as provided in subsection (D) of this Section, the owner of a grandfathered right may extinguish the right in exchange for extinguishment credits by submitting the following:

1. A notarized statement of extinguishment of a grandfathered right on a form provided by the Director;
2. The grandfathered right number;
3. If the right being extinguished is a type 1 non-irrigation grandfathered right or an irrigation grandfathered right, evidence of ownership of the land to which the grandfathered right is appurtenant;
4. If the grandfathered right is located in the Prescott Active Management Area, evidence that all of the following conditions are met:
  - a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town, or county before August 21, 1998; and
  - b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998;

5. If the right being extinguished is an irrigation grandfathered right, evidence that the development of the land to which the right is appurtenant is not completed; and

6. Any additional information the Director may reasonably require to process the extinguishment.

**B. The Director shall calculate the amount of extinguishment credits pursuant to R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B). The Director shall notify the owner of the amount of extinguishment credits in writing. If the owner is extinguishing only a portion of the right, the Director shall issue a new certificate of grandfathered right for the remainder of the right.**

**C. A type 1 non-irrigation grandfathered right or an irrigation grandfathered right may be extinguished in whole or in part. A type 2 non-irrigation grandfathered right may be extinguished only in whole.**

**D. The following rights may not be extinguished in exchange for extinguishment credits:**

1. An irrigation grandfathered right that is appurtenant to land that has been physically developed for a non-irrigation use. The Director shall not consider the land to be physically developed until the development is completed.

2. A type 1 non-irrigation grandfathered right, if the Director determines that the holder is likely to continue to receive groundwater from an undesignated municipal provider for the same use pursuant to the provider's service area right or pursuant to a groundwater withdrawal permit.

3. A type 2 non-irrigation grandfathered right that was issued based on the withdrawal of groundwater for mineral extraction or processing or for the generation of electrical energy.

4. On or after January 1, 2025, any grandfathered right that is in the Phoenix, Prescott, or Tucson AMAs.

5. A type 1 non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson AMA in the determination made under A.R.S. § 45-463(F).

E. The owner of extinguishment credits may pledge the credits to a certificate or to a designation before the certificate or designation is issued by submitting with the application for the certificate or designation a notice of intent to pledge extinguishment credits on a form provided by the Director. The extinguishment credits shall be pledged to the certificate or designation upon issuance of the certificate or designation.

F. The owner of extinguishment credits may pledge the credits to a certificate or to a designation after the certificate or designation is issued by submitting a notice of intent to pledge extinguishment credits on a form provided by the Director. The Director shall notify the owner of the extinguishment credits and the certificate holder or designated provider that the credits have been pledged to the certificate or designation.

G. Extinguishment credits that have not been pledged to a certificate or designation may be conveyed within the same active management area. Extinguishment credits pledged to a certificate or designation shall not be conveyed to another person, except that:

1. If extinguishment credits are pledged to a certificate that is later assigned or reissued, any unused credits are transferred, by operation of this subsection, to the assigned or reissued certificate. If the certificate is partially assigned or reissued, a pro rata share of the unused extinguishment credits is transferred to each assigned or reissued certificate according to the estimated water demand.

2. If extinguishment credits are pledged to a certificate for a subdivision that is later served

by a designated provider or a municipal provider that is applying for a designation, any unused extinguishment credits may be used to support the municipal provider's designation as long as the municipal provider serves the subdivision and remains designated. If the municipal provider is no longer serving the subdivision or if the municipal provider loses its designated status, any unused extinguishment credits shall revert, by operation of this subsection, to the certificate to which they were originally pledged.

H. The Director shall review a statement of extinguishment of a grandfathered right and a notice of intent to pledge extinguishment credits pursuant to the licensing time-frame provisions in R12-15-401.

**R12-15-724. Adequate Water Supply Requirement—State Land Department/General Plan, Development Plan, Secondary Plan Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits**

~~A. The director shall not issue a water report for land determined by the commissioner of the Arizona State Land Department to be urban land requiring a general plan, development, or secondary plan in accordance with A.R.S. §§ 37-332 and 37-334. A water report shall be required of a subsequent purchaser only if the purchaser intends to plat and subdivide the land.~~

~~B. To obtain a determination that state urban land for which a state general plan has been prepared in accordance with A.R.S. § 37-332 has the quality and quantity of water needed for development, the commissioner shall apply to the director for a survey of available water supplies. The application shall include portions of the information required in R12-15-716 as required by the director. The survey of available water supplies shall contain a description of~~



~~the location of the land, a description of all water supplies which may be available for use on the state urban land, an estimate of the volume of each water source which may be available for use on the state urban land, a projection of the demand of the proposed use, and a description of whether the water source satisfies existing state water quality standards.~~

~~C. To obtain a determination of whether a development or secondary plan prepared for state urban land in accordance with A.R.S. § 37-334 provides for the delivery of an adequate water supply, the commissioner shall apply for an analysis of adequate water supply pursuant to the applicable provisions of R12-15-723. In the commissioner's application, the commissioner shall propose a conceptual development for the state urban land. If the director determines that an adequate water supply would exist for the conceptual development proposed by the commissioner in accordance with the commissioner's development or secondary plan, the director shall issue an analysis of adequate water supply to the commissioner. The director's determination shall constitute a finding that the requirements of A.R.S. § 37-334 have been satisfied.~~

~~D. If the director issues an analysis of adequate water supply pursuant to subsection (C) of this Section, and a subsequent purchaser for the state land described in the analysis proposes to construct a development which satisfies the standards established in the analysis, upon application for a water report, the purchaser shall receive a report without further review of the development's water use. If the development does not satisfy the standards established in the analysis, the purchaser's application for a water report shall receive full review from the director.~~

~~E. If the commissioner of the State Land Department provides adequate evidence that a subsequent purchaser of state urban land will be provided water by a designated provider, the~~

State Land Department shall be presumed to have met the applicable requirements of A.R.S. §§ 37-332 and 37-334 and shall be exempt from the provisions of this Section.

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Phoenix AMA as follows:

1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

<u>MANAGEMENT PERIOD</u>	<u>ALLOCATION FACTOR</u>
<u>Third</u>	<u>4</u>
<u>Fourth</u>	<u>2</u>
<u>Fifth</u>	<u>1</u>
<u>After Fifth</u>	<u>0</u>

2. If the application is for a designation and the applicant provided water to its customers prior to February 7, 1995, multiply 7.5 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Phoenix AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.

4. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Phoenix AMA and add that

volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.

**B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Phoenix AMA as follows:**

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
  - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation

grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and

- b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

**R12-15-725. Adequate Water Supply Requirement -- Fees Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits**

~~A. With respect to an application listed in subsection (B) of this Section, the director shall only accept or take action on the application upon payment of the appropriate fee as listed below. Payment may be made by cash, check, or by entry in an existing department fee credit account established pursuant to R12-15-152.~~

~~B. The following application fees shall be paid:~~

<del>APPLICATION</del>	<del>FEE (\$)</del>
<del>1. Water Report</del>	<del>200.00 up to 20 lots; each additional lot is 0.50; maximum of 800.00; subtract 20% of the original fee if physical availability and water quality determination unnecessary</del>
<del>2. Designation of Adequacy</del>	<del>400.00, up to 1,000 acre feet of demand in the calendar year prior to the date of application;</del>

	add 0.25 for each acre-foot above 1,000, maximum of 8,000.00; subtract 20% of the original fee if physical availability and water quality determination unnecessary
3. <del>Modification of Designation of Adequacy</del>	500.00
4. <del>Analysis of Adequate Water Supply</del>	1,000.00
5. <del>Physical Availability Demonstration—Undesignated Provider</del>	1,000.00
6. <del>Physical Availability Demonstration—Water Report Applicant</del>	1,000.00
7. <del>Survey of Available Water Supplies</del>	500.00

A. The Director shall calculate the groundwater allowance for a certificate or designation in the

Pinal AMA as follows:

1. If the application is for a certificate and the proposed municipal provider is a small municipal provider or a municipal provider that is required to comply with either a total gallons per capita per day requirement or a non-per capita program requirement established in the management plan in effect on the date of application, multiply the proposed subdivision's build-out population by 125 gallons per capita per day, and multiply the product by 365 days.

2. If the application is for a certificate and the proposed municipal provider is an existing municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, the groundwater allowance is zero acre-feet.
3. If the application is for a certificate and the proposed municipal provider is a new municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, multiply the proposed subdivision's build-out population by 62.5 gallons per capita per day and multiply the product by 365 days.
4. If the application is for a designation and the applicant is a small municipal provider or a municipal provider that is required to comply with either a total gallons per capita per day requirement or a non-per capita program requirement established in the management plan in effect on the date of application, multiply the provider's service area's population for the calendar year by 125 gallons per capita per day and multiply the product by 365 days.
5. If the application is for a designation and the applicant is an existing municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, the groundwater allowance is the largest volume of groundwater withdrawn by the applicant within the AMA in any one calendar year from calendar year 1980 through calendar year 1989.
6. If the application is for a designation and the applicant is a new municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, multiply the provider's

service area's population for the calendar year by 62.5 gallons per capita per day and multiply the product by 365 days.

**B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:**

1. For the extinguishment of a type 2 non-irrigation grandfathered right, an annual amount equal to the number of acre-feet indicated on the certificate.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, the amount calculated annually by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, except that:
  - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
  - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.

#### **R12-15-726, Prescott AMA Calculation of Groundwater Allowance and**

##### **Extinguishment Credits**

**A. The Director shall calculate the groundwater allowance for a certificate or designation in the Prescott AMA as follows:**

1. If the application is for a certificate of assured water supply, the Director shall:
  - a. Subtract the year of application from 2025.

b. Multiply the number determined in subsection (A)(1)(a) by the applicant's annual estimated water demand, and

c. Divide that product by two. The minimum volume that may be calculated in this subsection is zero acre-feet.

2. If the application is for a designation of assured water supply:

a. Except as provided in subsections (A)(3) and (A)(5), if the applicant was in existence as of January 12, 1999, and the application is filed before calendar year 2026, the Director shall:

i. Multiply by 100 the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott AMA for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;

ii. Determine the volume of the applicant's total water demand, from any source, for 1999, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;

iii. Determine the volume of the applicant's total water demand, from any source, for 2014, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;

iv. Subtract the volume calculated in subsection (A)(2)(a)(ii) from the volume calculated in subsection (A)(2)(a)(iii) and then multiply the difference by 26;

v. Divide the product obtained in subsection (A)(2)(a)(iv) by two;

vi. If any residential groundwater uses, including residential groundwater uses served



by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, multiply one-half acre-foot of groundwater by the number of housing units receiving the service and then multiply that product by 100;

vii. Determine the volume of groundwater withdrawn by the applicant from within the Prescott active management area during the period beginning January 1, 1999, and ending December 31 of the calendar year before the date of the application;

viii. Multiply the volume of groundwater withdrawn by the applicant from within the Prescott active management area in 1999 by the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application;

ix. Subtract from the volume calculated in subsection (A)(2)(a)(vii) the volume calculated in subsection (A)(2)(a)(viii). The volume calculated in this subsection shall not be less than zero; and

x. Add the volumes calculated in subsections (A)(2)(a)(i), (A)(2)(a)(v), and (A)(2)(a)(vi), and then subtract from the sum the volume calculated in subsection (A)(2)(a)(ix).

b. If the applicant did not exist as of January 12, 1999, or the date of application occurs after calendar year 2025, the groundwater allowance is zero acre-feet, except that if any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, the groundwater allowance is a volume of groundwater computed by multiplying one-half acre-foot of groundwater

by the number of housing units receiving the service and multiplying that product by 100.

3. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), at the request of the applicant, the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(ii) through (v) with the amount of groundwater necessary for the applicant to serve the residential lots described in subsection (A)(4):

a. To compute this amount of groundwater, the Director shall:

i. Determine the average dwelling occupancy within the applicant's service area and multiply that average occupancy by an amount of groundwater, calculated by multiplying 150 gallons per capita per day by 365 days; and

ii. Multiply the product in subsection (A)(3)(a)(i) by the number of residential lots described in subsection (A)(4), and then multiply that product by 100.

b. The Director shall not include the amount computed in subsection (A)(3)(a) within the amount of groundwater that the applicant may use under subsection (A)(2)(a) until a final plat for the lots has been recorded.

4. The Director shall include residential lots that will be served by the applicant in the calculation made under subsection (A)(3) if the lots meet all of the following criteria:

a. A preliminary plat for the lots was submitted to the city, town, or county on or before August 21, 1998, and the final plat is subsequently recorded;

b. The lots were not being served water on or before August 21, 1998; and

c. Any one of the following applies:

i. The lots were included within an application for certificate of assured water supply that was filed before August 21, 1998, the Director determined that the

application was complete and correct as of August 21, 1998, and the Director subsequently issued a certificate of assured water supply for the lots.

- ii. A preliminary plat for the lots was approved by a city, town, or county on or before August 21, 1998. At the time the preliminary plat was approved, the subdivider of the lots obtained a written commitment of water service from a municipal provider that was designated as having an assured water supply and the provider demonstrated to the satisfaction of the Director that sufficient water is physically available to serve the lots under the criteria in R12-15-716.
- 5. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), if the applicant makes the request described in subsection (A)(3), the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(viii) with an amount of groundwater calculated as follows. The Director shall:

  - a. Determine the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application and multiply that number of years by the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott active management area for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
  - b. Determine the average dwelling occupancy within the applicant's service area and multiply that average dwelling occupancy by an amount of groundwater calculated by multiplying 150 gallons per capita per day by 365 days;
  - c. For each year in the period beginning with 1999 and ending with the calendar year

- before the date of application, determine the number of the residential lots that meet the criteria in subsection (A)(4) and were served water by the applicant as of July 1 of the relevant year and add the number of these residential lots determined for each year;
- d. Multiply the volume of groundwater calculated in subsection (A)(5)(b) by the number of residential lots in subsection (A)(5)(c); and
- e. Add the volumes of groundwater from subsections (A)(5)(a) and (A)(5)(d).
- B.** The Director shall calculate the extinguishment credits for extinguishing a grandfathered right in the Prescott AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
2. For the extinguishment of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right:
- a. Through December 31, 2010:
- i. If the irrigation acres associated with the extinguished right were irrigated for at least four of the six calendar years preceding January 1, 2000, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply that product by 25.
- ii. If the irrigation acres associated with the extinguished right were not irrigated for at least four of the six calendar years preceding January 1, 2000, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the

extinguished right or the number of acres to which the extinguished right is appurtenant and multiply the product by the difference between 2025 and the year in which the statement of intent to extinguish is filed.

b. After December 31, 2010, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply the product by the difference between 2025 and the year in which the statement of intent to extinguish is filed.

**R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits**

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Tucson AMA as follows:

1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

<u>MANAGEMENT PERIOD</u>	<u>ALLOCATION FACTOR</u>
<u>Third</u>	<u>8</u>
<u>Fourth</u>	<u>4</u>
<u>Fifth</u>	<u>2</u>
<u>After Fifth</u>	<u>0</u>

2. If the application is for a designation and the applicant provided water to its customers before February 7, 1995, multiply 15 by the total volume of water provided by the

applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Tucson AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.

4. For each calendar year of the designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Tucson AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.

**B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Tucson AMA as follows:**

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the

calendar year of extinguishment.

2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
  - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
  - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

#### **R12-15-728. Reserved**

#### **R12-15-729. Remedial Groundwater; Consistency with Management Goal**

- A. Use of remedial groundwater by a municipal provider before January 1, 2025, is deemed consistent with the management goal of the AMA in which the remedial groundwater is withdrawn and is excluded when determining compliance with management goal requirements in this Article if all of the following apply:
  1. The Director determines that the remedial groundwater use is consistent with the management goal under subsection (F) or (H) of this Section or the remedial groundwater use is consistent with the management goal under subsection (J) of this Section; and
  2. The municipal provider complies with the metering and reporting requirements in

subsection (K) of this Section.

**B. A municipal provider that is using remedial groundwater or that has agreed in a consent decree or other document approved by ADEQ or the EPA to use remedial groundwater may apply to the Director for a determination that the municipal provider's use of the remedial groundwater is consistent with the management goal of the active management area by submitting an application on a form provided by the Director with the information required in subsection (D) of this Section before January 1, 2010.**

**C. A municipal provider filing an application under subsection (B) of this Section for remedial groundwater use associated with a treatment plant in operation before June 15, 1999, may request an increase in the project's annual authorized volume at the time the application is filed. The Director shall grant the request and increase the annual authorized volume up to the maximum treatment capacity of the treatment plant if the municipal provider submits evidence that an increase in the annual authorized volume is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the remedial action project.**

**D. An applicant shall provide the following with an application submitted under subsection (B) of this Section:**

- 1. A document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;**
- 2. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;**
- 3. The time period during which the remedial groundwater will be withdrawn and used by**



the municipal provider;

4. A reference to the annual authorized volume provided in the document submitted pursuant to subsection (D)(1) of this Section or, if the document submitted pursuant to subsection (D)(1) does not specify the annual authorized volume for the project, the annual authorized volume claimed by the municipal provider and a written justification for that volume;
5. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
6. The designated provider or certificate to which the remedial groundwater will be pledged;
7. If the municipal provider is requesting an increase in the annual authorized volume of the project pursuant to subsection (C) of this Section, evidence that the increase is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project;
8. The name and telephone number of a person the Department may contact regarding the application; and
9. Any other information reasonably required to assist the Director in making the determination under subsection (F) of this Section.

E. After receiving an application under subsection (B) of this Section, the Director shall determine that the application is complete and correct if it contains all the information required in subsection (D) of this Section and the Director verifies that the information is accurate. If the Director determines that the application is complete and correct, the Director

shall assign a priority date to the application according to the following:

1. If the Director determines that the application was complete and correct when filed, the priority date of the application is the date the application was filed.
2. If the Director determines that the application was not complete or correct when filed because of minor deficiencies, the Director shall notify the applicant of the deficiencies in writing and give the applicant 30 days to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within 30 days after the date of the notice, the priority date of the application is the date the application was filed.
3. If the Director determines that the application was not complete or correct when filed and that the deficiencies are not minor, the Director shall notify the applicant of the deficiencies and give the applicant at least 60 days to submit the necessary information to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within the time allowed by the Director, the priority date of the application is the date the applicant submits the necessary information to correct the deficiencies.

F. The Director shall approve a complete and correct application filed under subsection (B) of this Section if the Director determines that the applicant will use remedial groundwater before January 1, 2025. If the Director approves a municipal provider's application, the Director shall calculate the annual amount of remedial groundwater use that is deemed consistent with the management goal of the AMA as follows:

1. The Director shall determine the total annual amount of remedial groundwater use in all AMAs that is deemed to be consistent with the management goal under this subsection and subsections (H) and (I) of this Section for applications with a priority date earlier than the priority date of the municipal provider's application.

2. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is equal to or greater than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed to be consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year.

3. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is less than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year up to the difference between the amount determined in subsection (F)(1) and 65,000 acre-feet, plus a percentage of the municipal provider's authorized remedial groundwater use during the year that exceeds the difference. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.

4. If the amount determined in subsection (F)(1) of this Section is equal to or greater than 65,000 acre-feet, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is a percentage of the municipal provider's authorized remedial groundwater use during the year. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.

G. If the Director determines that remedial groundwater use by a municipal provider is

consistent with the management goal of the active management area under subsection (F) of this Section, the determination shall apply to remedial groundwater used by the municipal provider between the priority date of the application and January 1, 2025.

**H.** If, before the effective date of this Section, a municipal provider filed an application with the Director requesting that the Director determine that the provider's use of remedial groundwater pursuant to an approved remedial action project is consistent with the management goal of the active management area under Laws 1997, Ch. 287, § 52, as amended by Laws 1999, Ch. 295, § 50, the following shall apply:

1. If the Director approved the application before the effective date of this Section and determined the annual amount of remedial groundwater use by the applicant that will be considered consistent with the management goal, the Director's determination shall apply after the effective date of this Section and the Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
2. If the Director did not approve the application before the effective date of this Section, the Director shall process the application under subsections (E) and (F) of this Section. If the Director approves the application, the Director's determination shall apply to remedial groundwater withdrawn and used by the municipal provider pursuant to the approved remedial action project from the priority date of the application until January 1, 2025.

**I.** A municipal provider that is using remedial groundwater that has been determined by the Director to be consistent with the management goal under subsection (F) or (H) of this

Section may apply to the Director for an increase in the annual authorized volume of the approved remedial action project as follows:

1. The applicant shall submit an application on a form provided by the Director.
2. The Director shall determine that the application is complete and correct if it contains all of the required information and the Director verifies that the information is accurate.
3. If the Director determines that an application filed under this subsection is complete and correct, the Director shall assign a priority date to the application using the criteria in subsection (E) of this Section.
4. The Director shall approve the application if the municipal provider submits information that demonstrates one of the following:
  - a. The annual authorized volume of the approved remedial action project has been increased in a consent decree or other document approved by ADEQ or the EPA; or
  - b. An increase is necessary to further the purpose of the approved remedial action project, and the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project.
5. If the Director approves the application, the Director shall determine the additional annual amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal of the active management area, using the criteria in subsections (F) and (G) of this Section. The Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal under this subsection in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.

J. Until January 1, 2025, use of remedial groundwater by a municipal provider during a year is

deemed consistent with the management goal of the AMA in which the remedial groundwater was withdrawn without approval of the Director under subsection (F) or (H) of this Section if:

1. The total annual amount of remedial groundwater withdrawn from all wells pursuant to the approved remedial action project does not exceed 250 acre-feet; and
2. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced before June 15, 1999, the municipal provider notified the Director in writing of the volume and duration of the anticipated withdrawals on or before August 15, 1999. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced on or after June 15, 1999, the municipal provider gave written notice of the volume and duration of the anticipated withdrawals on or before August 15, 1999, or before the date the withdrawals commenced, whichever is later. If the municipal provider gives notice after the effective date of this Section, the municipal provider shall include or attach all of the following:
  - a. A copy of a document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
  - b. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
  - c. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
  - d. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which

the application is filed;

e. The designated provider or certificate of assured water supply to which the remedial groundwater will be pledged; and

f. The name and telephone number of a person the Department may contact regarding the exemption.

**K. A municipal provider withdrawing remedial groundwater that has been determined to be consistent with the management goal under subsection (F) or (H) of this Section or that is consistent with the management goal under subsection (J) of this Section shall meter the remedial groundwater withdrawals separately from groundwater withdrawn pursuant to another groundwater withdrawal authority. The municipal provider shall include in its annual reports, filed under A.R.S. § 45-632, the amount of remedial groundwater withdrawn during the reporting year that is consistent with the management goal under this Section and the purposes for which the remedial groundwater was used.**

**R12-15-730. Assured and Adequate Water Supply Fees**

**A. With respect to an application listed in subsection (B) of this Section, the Director shall accept or take action on the application only upon payment of the applicable fee as listed.**

**B. An applicant shall pay the following fees, as applicable:**

<u>APPLICATION</u>	<u>FEE (\$)</u>
<u>1. Certificate</u>	<u>3000.00 for the first 20 lots; 3.00 for each additional lot; maximum 5000.00</u>
<u>2. Assignment of certificate issued after effective date of this Section</u>	<u>None</u>

<u>3. Reissuance of certificate issued after effective date of this Section, pursuant to R12-15-704(G)</u>	<u>None</u>
<u>4. Assignment of certificate issued before effective date of this Section, with or without request for classification as Type A certificate</u>	<u>250.00 for the first 20 lots; 0.50 for each additional lot; maximum 1000.00</u>
<u>5. Reissuance of certificate issued before effective date of this Section, pursuant to R12-15-704(G)</u>	<u>250.00 for the first 20 lots; 0.50 for each additional lot; maximum 1000.00</u>
<u>6. Classification as Type A, for certificate issued before the effective date of this Section (not included in assignment application)</u>	<u>250.00 for the first 20 lots; 0.50 for each additional lot; maximum 1000.00</u>
<u>7. Material plat change review</u>	<u>250.00</u>
<u>8. Designation or modification of designation that includes evaluation of physical, legal, and continuous availability or consistency with management goal</u>	<u>1000.00 for the first 1000 acre-feet; 0.50 for each additional acre-foot; maximum 10,000.00</u>
<u>9. Modification of designation that does not</u>	<u>500.00</u>



<u>include evaluation of physical, legal, and continuous availability or consistency with management goal</u>	
<u>10. Water report</u>	<u>900.00 for the first 20 lots; 2.00 for each additional lot; maximum 2000.00</u>
<u>11. Analysis</u>	<u>7500.00</u>
<u>12. Physical availability determination</u>	<u>5000.00</u>